Neutral Citation Number: [2024] EWHC 124 (Comm)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 26/01/2024

Before :

MR JUSTICE JACOBS

- -

Between :

CL-2022-000360	**Gatwick Investment Limited & Others**	**Claimant**
	- and -	
	Liberty Mutual Insurance Europe SE	**Defendant**
	AND	
CL-2022-000640	**Hollywood Bowl Group PLC**	**Claimant**
	- and -	
	Liberty Mutual Insurance Europe SE	**Defendant**
	AND	
CL-2023-000047	**(1) Starboard Hotel Limited & Others**	**Claimants**
	- and -	
	Liberty Mutual Insurance Europe SE	**Defendant**
	AND	
CL-2023-000049	**Fuller Smith & Turner PLC**	**Claimant**
	- and -	
	(1) Liberty Mutual Insurance SE (2) Aviva Insurance Limited	**Defendants**

AND

CL-2022-000638	**(1) Liberty Retail Limited & Others**	**Claimants**
	- and -	
	Liberty Mutual Insurance Europe SE	**Defendant**

AND

CL-2023-000064	**(1) Bath Racecourse Company Limited & Others**	**Claimants**
	- and -	
	(1) Liberty Mutual Insurance Europe SE **(2) Allianz Insurance PLC** **(3) Aviva Insurance Limited**	**Defendants**

AND

CL-2022-000687	**(1) International Entertainment Holdings Limited & others**	**Claimants**
	- and -	
	Allianz Insurance PLC	**Defendant**

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Claimants

Jeffrey Gruder KC and **Josephine Higgs KC** (instructed by **Edwin Coe LLP**) for the **Gatwick Starboard and Fuller Claimants**
Adam Kramer KC and **William Day** (instructed by **Stewarts Law LLP**) for the **Liberty Retail and Bath Racecourse Claimants**
Jeffery Gruder KC and **Josephine Higgs KC (**instructed by **Fenchurch Law (UK) Limited)** for the **Hollywood Bowl Group PLC and International Entertainment Holdings Limited Claimants**

Defendants

Michael Ryan (instructed by **HFW LLP)** for the **Aviva Insurance Limited Defendant** in **CL-2023-000049**
David Scorey KC and **David Walsh (**instructed by **DAC Beachcroft LLP)** for the **Liberty Mutual Insurance SE Defendant** in **CL-2022-000360, CL-2022-000640, CL-2023-000047, CL-2023-000049, CL-2022-000638, and CL-2023-000064** and**, Allianz Insurance PLC** and **Aviva Insurance Limited Defendants** in **CL-2023-000064**
Charles Dougherty KC and **Timothy Killen (**instructed by **DAC Beachcroft LLP)** for the **Allianz Insurance PLC Defendant in CL-2022-000687**

Hearing dates: 24th – 26th, 30th – 31st October and 1st – 3rd November 2023

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Approved Judgment

This judgment was handed down remotely at 11 am on Friday 26th January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives
(see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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MR JUSTICE JACOBS

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MR JUSTICE JACOBS :

A: Introduction and factual background

A1: The parties and the preliminary issues

1. This judgment concerns a number of preliminary issues in claims under business interruption insurance policies brought by a number of different claimants against various insurers. In each case, the claimants are claiming an indemnity pursuant to clauses which provide coverage where the use of premises is prevented or hindered as a consequence of action by a relevant authority. Such clauses were referred to as "Non Damage Denial of Access" or "NDDA" clauses in the earlier litigation which culminated in the decision of the Supreme Court in the *Financial Conduct Authority v Arch Insurance (UK) Ltd* [2021] UKSC 1, [2021] AC 649, on appeal from the decision of the Divisional Court (Flaux LJ and Butcher J) [2020] EWHC 2448 (Comm) ("the *FCA test case*"). NDDA clauses are one of three broad types of clauses which have been considered in prior litigation: see *London International Exhibition Centre PLC v Royal & Sun Alliance Insurance PLC and others* [2023] EWHC 1481, paragraphs [115] – [120] (*"London International Exhibition Centre")*.

2. The relevant coverage clause in most of the policies in the present case is headed "Prevention of Access (Non Damage)", and the parties therefore used the acronym "POAND" rather than NDDA. In other policies, the relevant clause has a different heading, and therefore a different acronym. Whatever the acronym, the coverage provided by NDDA, POAND and the clauses considered in this judgment have considerable similarities. The similarities in the disputes between the various claimants and insurers gave rise to the hearing of a series of related preliminary issues.

3. The claimants in the various proceedings were as follows.

4. CL-2022-000360 concerned the "Gatwick" group of claimants. The Gatwick claimants are 6 insured companies each of which was the owner/operator of a hotel in England. CL-2022-000640 concerned a claim by Hollywood Bowl Group Plc ("Hollywood Bowl"), which is an operator of bowling and indoor golf centres and other leisure activities in England, Wales, and Scotland. CL-2023-000049 concerned a claim by Fuller Smith & Turner Plc ("Fullers"), which is a hotelier and owner and operator of licensed premises in England. CL-2023-000047 concerned the "Starboard" group of claimants. The Starboard claimants are 21 companies, each of which is the owner or operator of a separate hotel in England. The argument on behalf of all of these various claimants was presented by Mr Jeffrey Gruder KC and Ms Josephine Higgs KC.

5. CL-2022-000638 concerned the "Liberty Retail" group of claimants. The Liberty Retail claimants are all associated with the very well-known Liberty store in Regent Street, London. CL-2023-000064 concerned the "Bath Racecourse" group of claimants. The Bath Racecourse claimants are various companies which owned/operated racecourses and related facilities in England. The argument on behalf of all of these claimants was presented by Mr Adam Kramer KC and Mr William Day.

6. CL-2022-000687 concerned the International Entertainment Holdings Ltd (or "IEH") group of claimants. The IEH claimants own or operate various theatres, opera houses,

and similar entertainment venues in England and Scotland. These claimants were also represented by Mr Gruder and Ms Higgs.

7. The main insurer defendant to all the claims (except those brought by the IEH claimants) is Liberty Mutual Insurance Europe SE ("Liberty Mutual"). The policies issued to the Gatwick, Hollywood Bowl, Fullers, Starboard and Liberty Retail claimants were all issued on the basis of standard policy wording of Liberty Mutual, with the key clauses, central to the preliminary issues, being identical or at least materially identical in all these policies. Liberty Mutual also insured the Bath Racecourse claimants, but on different standard form wording. The difference in wording in the Bath Racecourse policy, as compared to the other policies, had resulted in Liberty Mutual accepting, in principle, that the Bath Racecourse claimants had coverage for business interruption losses pursuant to the relevant coverage clause in their case. Liberty Mutual was represented by Mr David Scorey KC and Mr David Walsh.

8. In addition to Liberty Mutual, there were other insurer defendants in some of the proceedings.

9. The Fullers policy was subscribed by Aviva Insurance Ltd ("Aviva") as well as Liberty Mutual, each as to 50%. Unlike Liberty Mutual, however, Aviva admitted the occurrence of an insured peril under the relevant policy, and it has therefore paid Fullers the sum of £ 500,000 which it alleged to be the maximum amount of any claim under the policy. Accordingly, the issues which affected Aviva were those relating to policy limits. In relation to the claim under the Fullers policy, Aviva was represented by Mr Michael Ryan.

10. The Bath Racecourse policy was subscribed by Allianz Insurance PLC ("Allianz") and Aviva in addition to Liberty Mutual. In relation to the Bath Racecourse claim, all insurers were represented by Mr Scorey and Mr Walsh.

11. The IEH policy was written by Allianz. In relation to the proceedings brought by the IEH claimants, Allianz was represented by Mr Charles Dougherty KC and Mr Timothy Killen.

12. The preliminary issues to be determined by the court were those identified in an Order dated 31 July 2023. They are set out in Section H of this judgment. A number of the issues were ultimately not the subject of argument. In particular, Liberty Mutual accepted that certain arguments on causation were not realistically available in the light of first instance authority in *Corbin & King Ltd and others v Axa Insurance UK Plc* [2022] EWHC 409 (Comm) ("*Corbin & King*") and *London International Exhibition Centre*. Liberty Mutual had therefore agreed with various claimants as to how the relevant preliminary issues would be answered at first instance, whilst reserving its right to advance its causation arguments on appeal. As the hearing progressed, it became clear that there was no substantial dispute on a number of other issues which had been identified. For this reason, certain questions in Section H are not discussed in this judgment, and the answers reflect the parties' agreement as to how they should be answered at the present stage.

13. The preliminary issues fall into the following broad categories. They concerned (1) trigger and causation; (2) policy limits; and (3) the question of whether receipts of

"furlough" payments under the Coronavirus Job Retention Scheme or "CJRS" needed to be brought into account.

14. The parties in each of the cases had reached agreement on a document which contained agreed and assumed facts for the purposes of the preliminary issues. Accordingly, no evidence from any factual or other witnesses was called. As the parties' arguments developed, they were principally focused on the wording of the relevant policies rather than particular factual points which had been agreed or assumed. There was therefore relatively little reference to the detail within the agreed and assumed facts, and it is unnecessary to set out much of that detail in this judgment. Section A2, which is drawn principally from the Gatwick agreed and assumed facts, provides a general factual background to the litigation. Where necessary, later sections refer to particular agreed facts relevant to certain issues, such as those relating to the businesses operated by the various claimants and their interruption, and the facts agreed in relation to CJRS.

15. Oral submissions on all the cases apart from IEH took place over 4 days between 24 and 30 October 2023. Oral submissions in the IEH case were made on 1 and 2 November 2023. All issues were thoroughly and carefully addressed in the parties' written and oral submissions.

A2: Factual background: Covid-19 and the UK Government's response

The coronavirus pandemic and the restrictions imposed by the government

16. On 12 January 2020, the World Health Organization ("WHO") announced that a novel coronavirus had been identified in samples obtained from cases in China. This announcement was subsequently recorded by Public Health England ("PHE"). The virus was named severe acute respiratory syndrome coronavirus 2, or "SARS-CoV-2", and the associated disease was named "Covid-19".

17. On 30 January 2020, the WHO declared the outbreak of Covid-19 a "Public Health Emergency of International Concern".

18. On 31 January 2020, the Chief Medical Officer for England confirmed that two patients had tested positive for Covid-19 in England.

19. On 10 February 2020, the Health Protection (Coronavirus) Regulations 2020 (SI 2020/129) were made by the Secretary of State for Health and Social Care, pursuant to powers under the Public Health (Control of Disease) Act 1984 (the "1984 Act"). These Regulations provided for the detention and screening of persons reasonably suspected to have been infected or contaminated with coronavirus. The Regulations were subsequently repealed on 25 March 2020 by the Coronavirus Act 2020 (the "2020 Act").

20. On 2 March 2020, the first death of a person who had tested positive for Covid-19 was recorded in the UK, although the first death from Covid-19 was publicly announced by the Chief Medical Officer for England on 5 March 2020. Covid-19 would go on to be a cause of nearly 200,000 deaths in the UK since March 2020.

21. On 4 March 2020, the UK Government published guidance titled "Coronavirus (COVID-19): What is Social Distancing?". It referred to the Government's new

coronavirus action plan from the previous day and also referred to the possibility of introducing social distancing measures and asked people to think about how they could minimise contact with others.

22. On 5 March 2020, Covid-19 was made a "notifiable disease", and SARS-CoV-2 made a "causative agent", in England by amendment to the Health Protection (Notification) Regulations 2010 (SI 2010/659) (the "2010 Regulations").

23. On 11 March 2020, the WHO declared Covid-19 to be a pandemic.

24. On 12 March 2020, the UK Chief Medical Officers raised the risk level from Covid-19 from "moderate" to "high".

25. On 16 March 2020, the UK Government published guidance on social distancing. The guidance advised vulnerable people to avoid social mixing and to work from home where possible. The guidance included advice that large gatherings should not take place.

26. Also on 16 March 2020, the Prime Minister made a statement to the British public in which he said that "now is the time for everyone to stop non-essential contact with others and to stop all unnecessary travel. We need people to start working from home where they possibly can. And you should avoid pubs, clubs, theatres, and other such social venues". He added that "as we advise against unnecessary social contact of all kinds, it is right that we should extend this advice to mass gatherings as well".

27. On 20 March 2020, the Prime Minister made a further statement in which he thanked everyone for following the guidance issued on 16 March 2020 but said that further steps were now necessary. He said that across the UK cafes, pubs, bars, and restaurants were being told to close as soon as they reasonably could and not open the following day.

21 March 2020 Regulations

28. On 21 March 2020, the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (SI 2020/327) (the "21 March Regulations") were made by the Secretary of State for Health and Social Care pursuant to powers under the 1984 Act.

29. The 21 March Regulations provided for the closure of businesses set out in the Schedule to the Regulations. Under regulation 2(1) the businesses listed in Part 1 of the Schedule, which comprised restaurants, cafes, bars (including those in hotels), were required to close or cease carrying on the business of selling food and drink other than for consumption off the premises. Pursuant to regulation 2(2) of the 21 March Regulations, food or drink sold by a hotel or other accommodation as part of room service was not to be treated as being sold for consumption on its premises.

30. Regulation 3 of the 21 March Regulations made contravention of regulation 2 without reasonable excuse a criminal offence, punishable on summary conviction by a fine. Regulation 4(1) provided that a person designated by the Secretary of State may take action as necessary to enforce a closure or restriction imposed by regulation 2.

31. On 22 March 2020, the Prime Minister announced the next stage of the UK Government's plan, which included shielding measures for vulnerable people and advising members of the public to stay two metres apart even when outdoors.

32. On 23 March 2020, the Prime Minister made a further statement in which he said that it was vital to slow the spread of the disease and "that's why we have been asking people to stay at home during this pandemic". The time had, however, come for "us all to do more". From that evening he was therefore giving "the British people a very simple instruction— you must stay at home". He said that people would only be "allowed to leave their home" for very limited purposes such as shopping for basic necessities and "travelling to and from work, but only where this is absolutely necessary and cannot be done from home". He added that "if you don't follow the rules the police will have the powers to enforce them, including through fines and dispersing gatherings". In order to "ensure compliance with the Government's instruction to stay at home" he stated that "we will immediately close all shops selling non-essential goods … stop all gatherings of more than two people in public … and we'll stop all social events, including weddings, baptisms, and other ceremonies, but excluding funerals."

33. Also on 23 March 2020, the UK Government issued guidance to businesses about closures. This included advice that it would be an offence to operate in contravention of the 21 March Regulations and that businesses in breach of the 21 March Regulations would be subject to prohibition notices and potentially unlimited fines.

34. The guidance (which was later updated on 1 May 2020) stated (amongst other things):

> "When we reduce our day-to-day contact with other people, we will reduce the spread of the infection. That is why the government is now (23 March 2020) introducing three new measures.
>
> 1. Requiring people to stay at home, except for very limited purposes
>
> 2. Closing certain businesses and venues
>
> 3. Stopping gatherings of more than two people in public
>
> Every citizen must comply with these new measures. The relevant authorities, including the police, will be given the powers to enforce them – including through fines and dispersing gatherings.
>
> These measures are effective immediately. The Government will look again at these measures in three weeks, and relax them if the evidence shows this is possible.
>
> …….
>
> 1. Staying at home
>
> You should only leave the house for one of four reasons:

Shopping for basic necessities, for example food and medicine, which must be as infrequent as possible.

One form of exercise a day, for example a run, walk, or cycle - alone or with members of your household.

Any medical need, or to provide care or to help a vulnerable person.

Travelling to and from work, but only where this absolutely cannot be done from home.

These four reasons are exceptions - even when doing these activities, you should be minimising time spent outside of the home and ensuring you are 2 metres apart from anyone outside of your household.

These measures must be followed by everyone. Separate advice is available for individuals or households who are isolating, and for the most vulnerable who need to be shielded.

2. Closing non-essential shops and public spaces

Last week, the Government ordered certain businesses - including pubs, cinemas and theatres - to close. The Government is now extending this requirement to a further set of businesses and other venues, including:

all non-essential retail stores - this will include clothing and electronics stores; hair, beauty and nail salons; and outdoor and indoor markets, excluding food markets.

libraries, community centres, and youth centres.

indoor and outdoor leisure facilities such as bowling alleys, arcades and soft play facilities.

communal places within parks, such as playgrounds, sports courts and outdoor gyms.

places of worship, except for funerals attended by immediate families.

hotels, hostels, bed and breakfasts, campsites, caravan parks, and boarding houses for commercial/leisure use (excluding permanent residents and key workers).

……..

4. Delivering these new measures

> These measures will reduce our day to day contact with other people. They are a vital part of our efforts to reduce the rate of transmission of coronavirus.
>
> Every citizen is instructed to comply with these new measures.
>
> The Government will therefore be ensuring the police and other relevant authorities have the powers to enforce them, including through fines and dispersing gatherings where people do not comply."

35. On the same day PHE issued a document called "Coronavirus (COVID-19) Keeping away from other people: new rules to follow from 23 March 2020". It stated that there were three "important new rules everyone must follow to stop coronavirus spreading". These were: (i) "you must stay at home" and should only leave home "if you really need to" for one of the reasons stated; (ii) most shops should stay closed; and (iii) people must not meet in groups of more than two in public places.

26 March 2020 Regulations

36. On 26 March 2020, the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350) (the "26 March Regulations") were made by the Secretary of State for Health and Social Care exercising powers under the 1984 Act.

37. The 26 March Regulations revoked most of the 21 March Regulations and replaced them with new rules, which imposed more extensive restrictions. Regulation 4(1) was in similar terms to regulation 2(1) of the 21 March Regulations and required the businesses listed in Part 1 of Schedule 2 - which again comprised restaurants, cafes, bars (including in hotels), which were specifically referred to in Part 1 of Schedule 2 of the 26 March Regulations - to close or cease selling any food or drink other than for consumption off its premises. However, regulation 4(2) of the 26 March Regulations stated that "food or drink sold by a hotel or other accommodation as part of room service is not to be treated as being sold for consumption on its premises".

38. Regulation 5 provided that:

> "(3) a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on that business during the emergency period."

39. There were certain limited exceptions where accommodation could lawfully be provided:

> "(4) A person referred to in paragraph (3) may continue to carry on their business and keep any premises used in that business open—
>
> (a) to provide accommodation for any person, who—

(i) is unable to return to their main residence;

(ii) uses that accommodation as their main residence;

(iii) needs accommodation while moving house;

(iv) needs accommodation to attend a funeral;

(b) to provide accommodation or support services for the homeless,

(c) to host blood donation sessions, or

(d) for any purpose requested by the Secretary of State, or a local authority.

40. Regulation 8(1) provided "relevant persons" with the power to take such action as necessary to enforce any requirements imposed by (inter alia) regulation 5. "Relevant person" was defined in Regulation 8(12)(a) to include a constable, a police community support officer or a person designated by a local authority or the Secretary of State. Regulation 9(1) provided that a contravention of (inter alia) Regulation 5 without reasonable excuse was an offence. Such offences were punishable on summary conviction by a fine. Regulation 10(1) provided "authorised persons" with powers to issue fixed penalty notices. "Authorised person" was defined to include a constable, a police community support officer or a person designated by the Secretary of State. Regulation 11 provided that the Crown Prosecution Service, and any person designated by the relevant local authority or Secretary of State, could bring proceedings for an offence under the regulations.

41. The 26 March Regulations prohibited the Gatwick and Starboard claimants' hotels from receiving guests save for those in the very limited number of categories specified above. Restaurants and bars were closed to both residents and outside visitors. Any residents who could lawfully stay in the hotels had to be served meals in their rooms.

4 July 2020 Regulations

42. On 4 July 2020, the 26 March Regulations were revoked and replaced with more limited restrictions in the Health Protection (Coronavirus, Restrictions) (No 2) (England) Regulations 2020 (SI 2020/684) (the "4 July Regulations") in England. Although the hotels and the restaurants and cafes within them were legally entitled to reopen, there were strict social distancing and cleansing requirements which limited the number of guests.

The September 2020 Regulations

43. On 9 September 2020, the Prime Minister announced that from Monday 14 September a new "Rule of 6" would be introduced. People would be prohibited from meeting socially in groups of more than six in any setting. The "Rule of 6" was given legal effect in hospitality venues by the Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020 (SI 2020/1008).

44. On 18 September 2020, the Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020 (SI 2020/1008) came into force. This applied the "Rule of 6" to hospitality venues and required an "appropriate distance" between tables. It provided (inter alia) that:

> "(1) A person responsible for carrying on a business of a public house, café, restaurant, or other relevant business must, during the emergency period, take all reasonable measures to ensure that—
>
> (a) no bookings for a table are accepted for a group of more than six persons unless one of the exemptions in regulation 5 of the Principal Regulations applies;
>
> (b) no persons are admitted to the premises in a group of more than six, unless one of the exemptions in regulation 5 of the Principal Regulations applies.
>
> (c) no person in one qualifying group mingles with any person in another qualifying group where this is not permitted under the Principal Regulations.
>
> (d) an appropriate distance is maintained between tables occupied by different qualifying groups."

45. An "appropriate distance" was defined as follows:

> "(i) at least two metres, or (ii) at least one metre, if—
>
> (aa) there are barriers or screens between tables;
>
> (bb) the tables are arranged with back to back seating, or otherwise arranged to ensure that persons sitting at one table do not face any person sitting at another table at a distance of less than two metres; or
>
> (cc) other measures are taken to limit the risk of transmission of the coronavirus between people sitting at different tables;"

46. The Prime Minister made a statement in the House of Commons on 22 September 2020, in which he announced that from Thursday 24 September: "all pubs, bars and restaurants must operate a table service only, except for takeaways. Together with all hospitality venues, they must close at 10pm and to help the police enforce this rule I am afraid that that means, alas, closing and not just calling for last orders, because simplicity is paramount." The 10pm curfew was given legal effect by the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 5) Regulations 2020 (SI 2020/1029).

47. Regulation 4A of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (SI 2020/684) amended by regulation 2 of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 5) Regulations 2020 (SI 2020/1029) provided that:

> "(1) A person responsible for carrying on a restricted business or providing a restricted service ("P") must not carry on that business or provide that service during the emergency period between the hours of 22:00 and 05:00, subject to paragraphs (2), (3) and (4).
>
> (2) Paragraph (1) does not prevent P selling food or drink for consumption off the premises between the hours of 22:00 and 05:00—
>
> (a) by making deliveries in response to orders received—
>
> (i) through a website, or otherwise by on-line communication.
>
> (ii) by telephone, including orders by text message; or
>
> (iii) by post; or
>
> (c) to a purchaser who collects the food or drink in a vehicle, and to whom the food or drink is passed without the purchaser or any other person leaving the vehicle."

48. Restricted businesses and services were defined in Schedule 3, Part 1 of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (SI 2020/684) as amended by regulation 2 of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 5) Regulations 2020 (SI 2020/1029) as including (inter alia):

> "1. Restaurants, including restaurants and dining rooms in hotels or members' clubs."

B: The policyholders and the policies

49. This section describes the various policyholders, the policies and the principal relevant terms, and the agreed or assumed facts as to the closure of the businesses of the various claimants. Capitalised words in this section reflects the capitalisation in the relevant policies.

B1: Gatwick

50. The Gatwick claimants are the owners and/or operators of six hotels in England. There are six separate Gatwick policies that each have a single named insured and a single hotel as follows:

    i. Policy 1000064038-09: Gatwick Investment Ltd trading as ("t/a") Crowne Plaza Gatwick Airport (First Claimant).

    ii. Policy 1000064030-09: Millcroft Management Ltd t/a Doubletree by Hilton Woking (Second Claimant).

    iii. Policy 1000064024-09: Sal Hotels Ltd t/a Mercure London Heathrow (Third Claimant).

iv. Policy 1000063824-09: Serena Investments Ltd t/a Holiday Inn Express (Fourth Claimant).

v. Policy 1000063832-09: Southampton Row Hotel LLP t/a Doubletree by Hilton London West End (Fifth Claimant).

vi. Policy 1000063836-09: London Victoria Hotel No 2 Ltd t/a Doubletree by Hilton London Victoria (Sixth Claimant).

51. The Gatwick claimants, via their brokers, entered into separate contracts of insurance, described on their front pages as "Commercial Combined Policies", with Liberty Mutual as a sole insurer. The policy period initially ran from 9 October 2019 to 7 October 2020 and was subsequently extended to 20 October 2020.

52. Each policy contained business interruption insurance on the terms of Liberty Mutual's standard policy wording in Section 2. The policy had a number of endorsements, including a "Prevention of Access (Non-Damage)" (or "POAND") endorsement.

> "Under Business Interruption loss following interference with the Business carried out by the Insured in consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises which shall prevent or hinder use of the Premises or access thereto or, interference with the Business carried out by the Insured.
>
> Provided that the Company shall not be liable under this extension for more than the amount shown against this extension in the Schedule.
>
> Subject to the terms, Conditions, limits and Exceptions of this Policy"

53. The insured peril is therefore a composite peril which required a number of elements including danger or disturbance within 1 mile of the Premises, and action by the Police or other Statutory Authority.

54. The Schedule to the policy provided a limit of £ 1,000,000 in respect of the POAND cover and a maximum indemnity period of 6 months.

55. The Gatwick policyholders, in common with all other policyholders, seek an indemnity for business interruption loss sustained at their premises, and allege that all elements of the insured peril have occurred. They rely upon various closures, restrictions or hindrances, including:

i. Closure of restaurants, bars and cafes on the Claimants' premises on the 21 March 2020 - 4 July 2020;

ii. Restrictions on the provision of accommodation at any hotel from 24 March 2020 – 4 July 2020;

iii. Hindrances and limitations caused by the social distancing and cleansing requirements after 4 July 2020;

iv. Hindrances and limitations caused by the "Rule of 6" after 18 September 2020; and

v. Hindrances and limitations caused by the 10 pm curfew after 24 September 2020.

56. The parties agreed that Covid-19 was a "danger" to life and health.

57. It was also agreed that restaurants, cafes and bars on the Gatwick claimants' premises closed on 21 March 2020 and reopened on 4 July 2020. However, any food or drink offering sold as part of room service within the Gatwick claimants' hotels continued to be able to operate without restriction between 21 March 2020 and 26 March 2020 and from 26 March 2020 until 4 July 2020, subject to certain prohibition (and related exceptions) imposed on accommodation. The Gatwick claimants were prohibited from offering accommodation in any of the hotels from 26 March 2020, save for very limited exceptions.

58. The hotels and the restaurants and cafes within them were legally entitled to reopen from 4 July 2020. There were strict social distancing and cleansing requirements which limited the number of guests.

59. From 18 September 2020, the cafes and restaurants within the Gatwick claimants' premises were required to comply with the "Rule of 6". From 24 September 2020, the curfew forced restaurants and cafes in hotels to close at 10pm.

60. It was also agreed that the regulations which mandated the closure of the Gatwick claimants' premises were passed in response to the dangers posed by Covid-19 by seeking to prevent or, at the least minimise, indoor contact between different households.

61. The material terms of the Gatwick policies are, broadly speaking, common across the policies issued to the Gatwick, Starboard, Fullers, Hollywood Bowl and Liberty Retail claimants, each of which incorporated the Liberty Mutual standard policy wording. Accordingly, the material terms of the Gatwick Policy are set out in this judgment, in particular in Section E below and the Appendix. The terms of other policies are described in this judgment, and are set out in the Appendix, only to the extent that they materially diverge from the Gatwick Policy or were referred to in argument.

62. The Gatwick policies also contain the following "savings" clause, which is relevant to the issues (issues 22 and 23, addressed in Section G below) concerning whether the various claimants should give credit for CJRS (i.e. "furlough") payments received. This issue arises in all of the cases except for Fullers (who did not wish to take the point).

63. The relevant policy wording in the Gatwick policies (which was materially the same in the other policies) is as follows, with the "savings" aspect of the clause underlined:

> "GROSS PROFIT INCLUDING INCREASE IN COST OF WORKING
>
> Under Business Interruption the insurance under this Item is limited to loss of Gross Profit due to a) Reduction In Turnover

> and b) Increase In Cost of Working and the amount payable as indemnity thereunder shall be:
>
> a) In respect of Reduction In Turnover the sum produced by applying the Rate of Gross Profit to the amount by which the turnover during the Indemnity Period shall in consequence of the Incident fall short of the standard turnover;
>
> b) In respect of Increase In Cost Of Working the additional expenditure (subject to the provisions of the uninsured standing charges clause) necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in turnover which but for that expenditure would have taken place during the Indemnity Period in consequence of the Incident but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;
>
> less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the business payable out of Gross Profit as may cease or be reduced in consequence of the Incident;"

B2: Starboard

64. The Starboard claimants are 21 owners and/or operators of separate hotels in England. A full list of policyholders and hotels, as described in the Policy, is contained in the Appendix to this judgment. The insured under the Starboard policy is "Starboard Hotels Ltd & Associated Companies" and the individual claimants are subsidiaries expressly identified as "Named Insured" or "Additional Named Insureds" in the endorsement to the policy.

65. The Starboard policy is a single "composite policy" through which Liberty Mutual provided business interruption cover to each of the insureds in a single Combined Commercial Policy (policy number: 1000307435-02). The policy period was 1 July 2019 to 30 June 2020. The policy provided business interruption cover with a POAND extension. The POAND extension is identical to the equivalent extension in the Gatwick policies.

66. The Schedule to the policy provided a limit of £ 1,000,000 in respect of the POAND cover, and a maximum indemnity period of 3 months.

67. Starboard claims an indemnity for business interruption losses sustained between 21 March 2020 and 4 July 2020.

68. As with the parties to the Gatwick proceedings, the parties were agreed that restaurants, cafes and bars on the Starboard claimants' premises closed on 21 March 2020 until they were permitted to reopen on 4 July 2020. However, any food or drink offering sold as part of room service within the Starboard claimants' hotels continued to be able to operate without restriction between 21 March 2020 and 26 March 2020 and from 26 March 2020 until 4 July 2020, subject to certain prohibitions (and related exceptions) imposed on accommodation. The Starboard claimants were prohibited from offering

accommodation in any of the hotels from 26 March 2020, save for very limited exceptions.

69. The parties were agreed that Covid-19 was a "danger" to life and health. They also agreed that the regulations which mandated the closure of the Starboard claimants' premises were passed in response to the dangers posed by Covid-19 by seeking to prevent or, at the least, minimise indoor contact between different households. Similar agreements were reached in the Gatwick agreed facts (described above) and in the other proceedings.

B3: Hollywood Bowl

70. The claimant in the Hollywood Bowl action is "Hollywood Bowl Group Plc and Subsidiary Companies", proprietors of bowling and indoor golf centres and other leisure activities, including pool tables, amusement machines, virtual reality gaming machines, and associated food and drink facilities. The claimant's business operates out of numerous separate premises. 65 premises were declared to Liberty Mutual: 59 premises in England, 2 premises in Wales, and 4 in Scotland.

71. Hollywood Bowl's policy was again written solely by Liberty Mutual. The policy was a "Commercial Property Policy" (number: 1000120774-06) for the period 1 October 2019 to 30 September 2020. This included POAND cover in an endorsement whose terms were identical to those in the Gatwick and Starboard polices.

72. The Schedule to the policy provided a limit of £ 500,000 and a maximum indemnity period of 3 months for the POAND cover.

73. Hollywood Bowl claims an indemnity for loss resulting from the interruption to its business caused by the closure of and/or restrictions on the use of its premises in England, Wales and Scotland mandated by various regulations from March 2020 to September 2020.

74. A distinct point arises in the Hollywood Bowl case: issue 4 and 5 below (addressed in Section D). Hollywood Bowl claim that the regulations made on 4 July 2020, that specifically applied to indoor sports and leisure facilities including bowling alleys, formed an additional interference separate from previous restrictions claimed by the other insured parties. The factual background concerning the restrictions affecting Hollywood Bowl are set out in Section D in relation to those issues.

75. In broad terms, the parties were agreed that various restrictions meant that Hollywood Bowl's premises were not permitted to open between 26 March 2020 and 15 August 2020, and then only on the basis of strict social distancing. The agreed facts referred to various other aspects of the restrictions affecting Hollywood Bowl, but the detail is not material to any of the issues addressed in this judgment.

B4: Fullers

76. Fullers is a company whose business comprises being a hotelier and owner and operator of licensed premises including a well-known chain of pubs. The named insured is "Fuller Smith & Turner Plc and Subsidiary Companies". Schedule 1 to the Particulars

of Claim identified 217 managed premises and 176 tenanted premises in England, and it was an assumed fact that Fullers operated out of those premises.

77. Fullers' policy was a "Commercial Property Policy" (policy number: 1000055534-06) which incorporated Liberty Mutual's standard policy wording. It was subscribed by Liberty Mutual and Aviva, each as to 50%. The policy was for the period 1 May 2019 to 1 May 2020.

78. The POAND cover was number 16 in a list of endorsements within the policy Schedule. Apart from the opening words, it was materially identical to the endorsements previously described:

> "Section 2 is extended to include loss following interference with the Business carried out by the Insured in consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises which shall prevent or hinder use of the Premises or access thereto or, interference with the Business carried out by the Insured.
>
> Provided that the Company shall not be liable under this extension for more than the amount shown against this extension in the Schedule."

79. The Schedule to the policy provided a limit of £ 1,000,000 in respect of the POAND cover, and a maximum indemnity period of 3 months.

80. Fullers claim an indemnity pursuant to the contract for each interference with business at each of the premises. As previously described, Aviva has admitted the incidence of the insured peril, but disputes the extent of its liability. There were assumed facts that Fullers' premises and the business carried out therefrom were forced to close from 21 March 2020 and were not permitted to open except for the purpose of takeaway. These premises were not permitted to open until 4 July 2020. It was also assumed that, in so far as any of Fullers' premises normally offered accommodation, the offering of accommodation was prohibited from 26 March 2020 until 4 July 2020, save for very limited exceptions as set out in Regulation 5 of the 26 March Regulations.

B5: Liberty Retail

81. The Liberty Retail claimants are six separate companies of the Liberty Group associated with the well-known "Liberty" department store in Regent Street, London. The Liberty Retail claimants are described in more detail in Section E, in the context of issue 19.

82. The policy issued to the Liberty Retail claimants was a "Commercial Property Policy" (ref: 1000168782-05) for the period 30 January 2020 to 30 January 2021. The policy was subscribed by Liberty Mutual and Swiss Re as to a 60% and 40% share respectively. Prior to the hearing, the Liberty Retail claimants settled with Swiss Re, and therefore the preliminary issues proceeded only as against Liberty Mutual.

83. The Liberty Retail policy contains a POAND endorsement which is identical to that contained in the Gatwick, Starboard and Hollywood Bowl policies.

84. The Schedule to the policy provided for a limit of £ 750,000 with a Maximum Indemnity Period of three months.

85. The Liberty Retail claimants claim an indemnity pursuant to each interference with business at each of their premises/business units. In addition, they claim an indemnity for Claims Preparation Costs ("CPC") cover and Additional Increased Cost of Working ("AICW") pursuant to endorsements described in Section E below.

86. It was an assumed fact that there was an occurrence of Covid-19 within 1mile of each of the insured premises at the material times. It was agreed that Covid-19 was a danger to life and health. It was agreed that the Liberty Retail claimants' businesses did not fall within Part 3 of Schedule 2 of the 26 March Regulations, which required (subject to certain exceptions and qualifications) retail businesses to close.

B6: Bath Racecourse

87. The policyholders in the Bath Racecourse action consist of 22 UK-registered companies that all form part of the "Arena Racing" group. The named insured is "Arena Racing Company, Arena Racing Corporation Limited & NR Acquisitions Topco Limited, Conzumel Limited &/or subsidiary companies". At the relevant time they operated racecourses, greyhound tracks, golf clubs, hotels, and a pub at 21 locations: 19 locations in England and two locations in Wales. The Bath Racecourse claimants are further described in the context of issue of 21A and 21B in Section E below.

88. The policy which provided cover to the Bath Racecourse claimants is a single composite policy (Policy Number B0460 71078804 2020) for the period 1 January to 31 December 2020. The policy was underwritten by Liberty Mutual, Allianz Insurance and Aviva Insurance, as to 40%, 20% and 40% respectively. The policy wording is not the Liberty Mutual standard wording previously described. Instead, the standard policy terms are referred to in the policy as the "Bluefin/Liberty 2016 Combined Wording".

89. The cover equivalent to the POAND cover previously described is provided under a "Denial of Access" (or "DOA") provision. This provides in material part as follows:

> "**Denial of Access**
>
> This Section extends to include any claim resulting from interruption of or interference with The Business carried on by The Insured at The Premises in consequence of
>
> …
>
> (b) action by the Police Authority and/or the Government or any local Government body or any other competent authority following danger or disturbance within a one mile radius of The Premises which shall prevent or hinder use of The Premises or access thereto
>
> …

> provided that after the application of all other terms conditions and provisions of this Section the liability of the Insurer shall not exceed
>
> …
>
> (ii) GBP 1,000,000 in respect of (b) above any one loss"

90. A separate provision provided for an increase in the limit to £ 2,500,000, but there is a dispute as to whether the "any one loss" wording remains applicable.

91. Unlike in the Gatwick, Starboard, Fuller, Hollywood Bowl and Liberty Retail actions, all the insurers in Bath Racecourse admit liability under the DOA clause. The live issues therefore concern policy limits. The insurers have thus paid their respective shares of a single £ 2.5m limit. The policyholders dispute the adequacy of this indemnity and also claim AICW and CPC costs.

92. The insurers also argue that credit should be given for the CJRS payments received by the Bath Racecourse claimants. The relevant policy provision in that regard is as follows:

> "**Savings**
>
> If any of the charges or expenses of The Business payable cease or reduce in consequence of the Damage such savings during the Indemnity Period shall be deducted from the amount payable."

93. The parties assumed certain facts relating to the closure of the Bath Racecourse claimants' business. However, in view of the shape of arguments presented at the hearing (including that the parties were agreed that issues as to the number of occurrences were for another day), it is not necessary to describe these in detail.

B7: IEH

94. The IEH claimants comprise various companies engaged in the ownership, operation and management of theatre, cinema, concert hall and restaurant businesses as well as related design, communications, full service digital media and marketing agencies. Most of the claimant companies owned and operated a single theatre or venue. Some of the companies owned or operated out of more than one theatre.

95. The cover was provided by Allianz under a "Commercial Select" policy (policy number: 27/SZ/23716656/04) for the period 30 April 2019 to 30 April 2020. The standard policy wording was different to the Liberty Mutual wordings previously described.

96. The policy contains a "Denial of Access Endanger Life or Property" (or "DOA") provision in clause S/30/1:

> "**S/30/1 Endanger Life or Property**
>
> Denial of Access Endanger Life or Property

> Any claim resulting from interruption of or interference with the Business as a direct result of an incident likely to endanger human life or property within 1 mile radius of the premises in consequence of which access to or use of the premises is prevented or hindered by any policing authority, but excluding any occurrence where the duration of such prevention or hindrance of us[e] is less than 4 hours, shall be understood to be loss resulting from damage to property used by the Insured at the premises provided that
>
> i) The Maximum Indemnity Period is limited to 3 months, and
>
> (ii) The liability of the Insurer for any one claim in the aggregate during any one Period of Insurance shall not exceed £500,000."

97. It was agreed that the policy was a composite policy, insuring each insured's interest separately. The arguments that arose in other cases, as to the effect of a "composite" policy, did not arise here.

98. The IEH claimants claim an indemnity pursuant to the policy for several interruptions experienced at their premises arising out of the regulations introduced for the control of the Covid-19 pandemic. In that regard, the parties agreed the following facts.

99. The IEH claimants complied, at all material times, with restrictions imposed on the use of their premises (including their ability to open in whole or in part) by advice given by the Government and legislation imposed by it (including but not limited to the 21 March Regulations and the 26 March Regulations).

100. At no point in time did the police or any other entity empowered to enforce compliance with the 21 March Regulations or the 26 March Regulations take any action against any of the IEH claimants to enforce such compliance or any breaches of the Regulations.

101. Each of the IEH claimants' businesses suffered interruption and/or interference by reason of the fact that the 21 March Regulations and/or 26 March Regulations mandated the total closure of the premises from which that IEH claimant's business was carried on. Such closure continued for a period longer than the 3 month maximum indemnity period specified in clause S/30/1, at least from 21 March 2020 to 3 July 2020.

102. Theatres, cinemas, concert halls and restaurant owners were permitted to re-open on 4 July 2020 when the 26 March Regulations were revoked and replaced by the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020. However, the Government advised that initially theatre performances should resume behind closed doors and it was not until August 2020 that theatre productions first started taking place in front of live (but socially distanced) audiences.

C: Legal principles and background

C1: Principles of construction

103. All of the preliminary issues raise issues of construction. The applicable principles of construction were not in dispute. They are summarised in paragraphs [62] – [66] of the

judgment of the Divisional Court in the *FCA test case*, referred to in paragraph [47] of the judgment of the Supreme Court:

> "[47] The core principle is that an insurance policy, like any other contract, must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean. Evidence about what the parties subjectively intended or understood the contract to mean is not relevant to the court's task".

104. The Supreme Court elaborated on the approach in paragraph [77] of its judgment:

> "…the overriding question is how the words of the contract would be understood by a reasonable person. In the case of an insurance policy of the present kind, sold principally to SMEs, the person to whom the document should be taken to be addressed is not a pedantic lawyer who will subject the entire policy wording to a minute textual analysis. It is an ordinary policyholder who, on entering into the contract, is taken to have read through the policy conscientiously in order to understand what cover they were getting". (internal citations omitted)

105. The parties also referred to my summary of the principles in *PizzaExpress Group Ltd v Liberty Mutual Insurance Europe SE* [2023] EWHC 1269 (Comm) ("*PizzaExpress*"), where (as here) there was a substantial issue as to policy limits. In the light of prior authority, including *Wood v Capita Insurance Services Ltd* [2017] AC 1173 and *Arnold v Britton* [2015] AC 1619, I summarised the essential principles as follows:

i) The Policy must be construed objectively by asking what a reasonable policyholder, with all the background knowledge which would reasonably have been available to both parties when they entered into the contract, would have understood the language of the Policy to mean.

ii) This does not involve "a literalist exercise focussed solely on a parsing of the wording of the particular clause": *Wood v Capita* at [10]. Instead, it is essential to construe contractual words in their applicable context. Their meaning must be assessed in the context of the clause in which they appear as well as in the landscape of the document as a whole.

iii) The unitary exercise of contractual construction can require the court to give weight to the implications of rival constructions by reaching a view as to which construction is more consistent with commercial common sense. However, commercial common sense should not be invoked retrospectively, or to rewrite a contract, in an attempt to assist an unwise party or to penalise an astute party.

C2: Covid-19 business interruption insurance cases

106. In the *London International Exhibition Centre* judgment dated 16 June 2023 paragraphs [115] – [156], I described the principal English case-law concerning Covid-19 business

interruption insurance cases. At the time of the oral argument on the preliminary issues, there had been no further significant English decisions to which the parties referred. However, a hearing of appeals in *Stonegate Pub Company Ltd v MS Amlin Corporate Member Ltd and others* [2022] EWHC 2548 (Comm) and *Various Eateries Trading Ltd v Allianz Insurance PLC* [2022] EWHC 2549 (Comm) was due to be heard later in November 2023. One of the issues to be argued in *Stonegate* was the question of credit for CJRS payments, which was also raised in the present case. In the event, however, the *Stonegate* appeal did not go ahead in consequence of a settlement reached between the parties.

107. The *Various Eateries* appeal was heard, and decided by the Court of Appeal in a judgment delivered on 16 January 2024: [2024] EWCA Civ 10. The court upheld the judgment of Butcher J. The *Various Eateries* judgment of Butcher J had not been significantly relied upon by either party in the course of argument on the preliminary issues. I do not consider that the judgment of the Court of Appeal has any material impact on the analysis and conclusions below.

C3: Precedent

108. A number of arguments, advanced on each side, would require me to reach different conclusions to those reached on materially identical issues by judges of the Commercial Court. Specifically:

(1) Liberty Mutual argue that Cockerill J was wrong to decide that the UK government was a relevant "Statutory Authority" in *Corbin & King v Axa Insurance UK Plc* [2022] EWHC 409 (Comm);

(2) Liberty Mutual argue that Cockerill J was wrong to decide, again in *Corbin & King*, that the applicable limit in a composite policy will usually be construed as applying to each separate insured;

(3) The Liberty Retail and Bath Racecourse claimants (to some extent supported by the Gatwick, Starboard and Hollywood Bowl claimants) argue that Butcher J's judgment in *Stonegate*, on the question of CJRS payments, was wrong and should not be followed.

109. In addition, the IEH Claimants invite me to reach a different conclusion as to the meaning of "incident" from that reached by the Divisional Court in the *FCA test case*.

110. There is ample authority in support of the proposition that, as a matter of judicial comity, I should follow the decision of another judge of first instance, unless I am convinced that the judgment is wrong: *Police Authority for Huddersfield v Watson* [1947] 1 KB 842, 848. In *Willers v Joyce* [2016] UKSC 44, Lord Neuberger said at [9]:

> "So far as the High Court is concerned, puisne judges are not technically bound by decisions of their peers, but they should generally follow a decision of a court of co-ordinate jurisdiction unless there is a powerful reason for not doing so."

111. More recently, in *Bilta (UK) Ltd (in liquidation) and others v Tradition Financial Services Ltd* [2023] EWCA Civ 112, Lewison LJ (giving the judgment of the Court of

Appeal) said (at [106]) that the first instance judge "correctly said that there was no precedent binding on him, but that he should follow decisions of courts of co-ordinate jurisdiction unless persuaded that they were clearly wrong". He described this as "an entirely conventional approach to authority", citing *Colchester Estates (Cardiff) v Carlton Industries plc* [1986] Ch 80; and *In re Cromptons Leisure Machines Ltd* [2007] BCC 214.

112. Similarly, in *London Borough of Barking and Dagenham v Argos Ltd* [2022] EWHC 1398 (Admin) (a Divisional Court case), Edis LJ quoted with approval at [46] the following passage of a judgment of Lewis J:

> "A judgment of a judge of the High Court is not binding on another judge of the High Court but that judge will follow the earlier decision unless he or she is convinced that it is wrong … The Privy Council has observed that High Court judges are not technically bound by decisions of other High Court judges "but they should generally follow a decision of a court of co-ordinate jurisdiction unless there is a powerful reason for not doing so"…. Such principles contribute to coherence and certainty within the legal system. They are likely to contribute to efficient and more cost-effective use of resources as the same point will not normally be re-argued at length and cost before different High Court judges." (Internal citations omitted)

113. In the context of Covid-19 business interruption insurance cases, there is an obvious need for coherence, certainty and cost-effective use of resources. There are now well over a hundred claims which have been issued in the Commercial Court, and which are being managed in a Covid-19 BI sub-list. The Commercial Court, and indeed other courts, have taken steps to expedite hearings, so that important points of principle can be decided. This was the case, for example, in the *FCA test case* proceedings as well as in *Corbin & King* and more recently in *London International Exhibition Centre*. As a result of the importance of points raised affecting the market as a whole, judges in the Commercial Court have been reasonably generous in granting permission to appeal. It is inimical to the efficient conduct of the Covid-19 BI cases if each point decided at first instance is then to be reargued at first instance, in order to attempt to persuade a second Commercial Court judge to take a different view to the first. Clearly that is a permissible exercise where a party is able realistically to contend that there is a clear error on the part of the first judge. However, it is not a useful or permissible exercise where a party is really doing little or no more than seeking to repeat, before a second judge, arguments which were rejected by the first judge. In the latter case, parties should recognise when a particular point is not, realistically, open at first instance and can only properly be pursued, if at all, on appeal.

114. As will become apparent, I was not persuaded that the judgments, on the relevant issues, of Cockerill J and Butcher J, or indeed the Divisional Court were clearly wrong, and I will therefore follow and apply those judgments.

D: LMIE Wordings: Trigger and Causation issues

Gatwick, Fuller, Starboard and Hollywood Bowl

115. **Issue 1:**

Did, as the Claimants contend, the alleged interferences with each of the Claimants' businesses arise in consequence of "*action by the Police or any other Statutory Authority*" which prevented or hindered use of the Premises or access thereto or, interference with the Business carried out by the Claimants or, as Liberty Mutual Insurance Europe SE contends, were the Regulations relied upon the Claimants instead laws made by central government via Orders in Council or by the Secretary of State which did not constitute "*action by the Police or any other Statutory Authority*"?

The parties' arguments

116. The critical question here concerns the meaning of "other Statutory Authority" in the context of the clause as a whole**.**

117. On behalf of the various Claimants that he represented, Mr Gruder KC submitted that this issue has already been decided in earlier proceedings. He referred to paragraph 9 of the declarations made by the Supreme Court in the *FCA test case*, and to the decision of Cockerill J in *Corbin & King*.

118. Irrespective of those decisions, however, he submitted that the words "statutory authority" (whether or not capitalised) would ordinarily be understood by a reasonable policyholder as meaning any person, body or entity which has a lawful right or power to do something. The word "authority" means any person, body or entity which has power to do something. "Statutory" in context was intended to mean that the authority had power by law. Even on its narrowest reading, "statutory" indicates simply that the body, or the power it exercises, derives from a statute or statutory instrument or rules made thereunder.

119. There was therefore cover for interference resulting from the action of any person, body or entity which had lawful authority (i.e. deriving from statute or statutory instrument) to prevent access to the premises, following a relevant danger. There was no warrant for ascribing a more restrictive meaning to these words. All of the measures relied on by the Claimants were introduced by or on behalf of the UK government. All of those measures constituted action by a Statutory Authority as that term is used in the POAND clause. The obvious intention of the words was to refer to action taken by the police or any other person, body or entity which had lawful authority to prevent access to the premises. Accordingly, both central government and local government had such authority to prevent access, and it exercised that authority by bringing into force the various regulations upon which the Claimants rely.

120. Mr Gruder also advanced a number of subsidiary points. He disputed Liberty Mutual's submission that "statutory authority" requires an examination of whether or not the relevant body, which exercised powers pursuant to statute, was itself a creation of statute. In his oral submissions, he said that no reasonable policyholder would care how an authority, which was exercising statutory powers, had been created. Even if that

restrictive approach were to be taken, however, it did not assist Liberty Mutual. The Secretary of State for Health and Social Care is a corporation sole by virtue of statute: specifically Section 2 (1) of the Ministers of Crown Act 1975 and the Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions (Commonhold Land) Order 2018.

121. He also submitted that the restrictions imposed by the various regulations could themselves properly be described as an "action by the Police or other Statutory Authority" in circumstances in which both the police and local authorities had powers to enforce the restrictions in all the regulations.

122. Similar submissions were also made by Mr Kramer KC on behalf of the Liberty Retail claimants. He submitted that the UK government was clearly an "authority" in the sense used by the Oxford English Dictionary: it had the power or right to give orders, make decisions, and enforce obedience, and it had moral, legal or political supremacy. The word "statutory" did not narrow the meaning of "authority". The reasonable policyholder would understand that the prevention of access imposed in response to the relevant danger or disturbance could be imposed by local or national government, depending on the nature and extent of that danger or disturbance. All the relevant actions were governmental and so by statutory authority. The Secretary of State for Health and Social Care, in making the relevant regulations, was exercising statutory authority.

123. On behalf of Liberty Mutual, Mr Scorey KC submitted that the "Police" limb of the clause had no application. Whilst the police were involved in monitoring compliance with Covid-19 restrictions, they were not the body actually interfering with the Claimants' business by forcing them to close. The interferences were not therefore in consequence of action "by" the police.

124. As to "other Statutory Authority": this phrase assumes a peril which is concerned with restrictions imposed by bodies such as the police, which are localised constabularies, or by other creatures of statute which will have a similarly local remit: for example, local authorities or river authorities.

125. In his written submission, Mr Scorey submitted that the term "statutory authority" meant, therefore, "a body deriving its authority from or owing its existence to a statute". The clause was therefore directed to restrictions of a type which may be imposed by such a body, as opposed to restrictions which may be imposed by a non-statutory body. Later in his written submissions, Mr Scorey again referred to the need for the restrictions to be "imposed by organisations deriving their authority from statute".

126. Those arguments appeared to accept that "statutory authority" would include a body deriving its authority from statute. However, the focus of Mr Scorey's submission was the need for the authority to be created by statute. Thus he submitted that the words could not sensibly refer to a body or person not created by statute, but exercising a statutory power, because the clause referred to action "by" a statutory authority. Statutory authority thus defined the status of the originator of the restrictions. It is not a reference to the nature of the powers being exercised. Thus, he submitted that the fact that the Secretary of State (Mr Matt Hancock) exercised a power conferred on him by statute does not, in and of itself, make him a "statutory authority". As he said in his oral submissions: one is concerned with an authority or body which is statutory in

nature, in other words created by statute. The police were such a body: they had been put on a statutory footing. The central government was not: it is not a statutory entity.

127. This argument, he submitted, was supported by the obiter decision of Mr Justice Denis McDonald in the Irish High Court in *Brushfield Ltd v Axa* [2021] IEHC 263. At paragraph [198], McDonald J said that the relevant actions of the government or a minister of the government were not actions of a "statutory body". A reasonable person would understand a reference to a "statutory body" to embrace a body which is established by statute. Mr Scorey submitted that little weight should be accorded to the decision of Cockerill J to the contrary in *Corbin & King.*

128. Mr Scorey submitted that the ordinary meaning of the words is reinforced by the context. Thus, the police derived their authority from statute. In England, the Police Act 1996 consolidated earlier legislation, and it is still the main act giving authority for the maintenance of police forces in England and Wales. The words "or other", before "Statutory Authority", should be construed as being a statutory authority of substantially the same character as the police. It must therefore be a local organisation rather than a national body. In the UK, police forces are principally organised locally through county or regional constabularies. There are the odd exceptions, such as the British Transport Police and the Civil Nuclear Constabulary. However, these exceptions were unlikely to have been in the forefront of the parties' or the drafters' minds. The classic example of statutory authorities of substantially the same character as the police would be fire brigades, which are established by statute and are local in nature.

129. Against this background, none of the restrictions relied upon by the Claimants were imposed by organisations deriving their authority from statute and/or by organisations of substantially the same character or genus as the police. Instead, all of the actions relied upon were by central government or the devolved administrations through statutory instruments. It was irrelevant that the powers exercised by the Secretary of State for Social Care were derived from statute, because the office-holder (Mr Hancock) was not a statutory authority in any sense.

130. It was no answer to this point to contend that the Secretary of State had been made a corporation sole. First, this was a highly technical point that might be raised by a pedantic lawyer rather than an ordinary commercial policyholder. "Statutory Authority" could simply not be read as encompassing the Secretary of State or any other ministerial role. Secondly, the relevant instrument which had made the Secretary of State a corporation sole was not a statute: it was a statutory instrument. Thirdly, the incorporation as a corporation sole is purely for convenience to ensure continuity between office holders. It does not make the Secretary of State a creature of statute when making statutory instruments. The relevant regulations were made by the "very corporeal" Mr Hancock, the politician who had later appeared on various reality TV programmes.

Discussion

131. There was no dispute as to the statutory origin of the various regulations which gave rise to the prevention or hindrance of the use of the Claimants' premises, and thereby the interruption of their business. By way of example, the 21 March Regulations were legislated for in a statutory instrument made by the Secretary of State of Health and

Social Care pursuant to statutory powers granted to the Secretary of State to make such regulations by the 1984 Act. The regulations were made pursuant to the specific statutory powers in Sections 45C, 45F and 45P of the 1984 Act. Those regulations were therefore a statutory instrument made pursuant to statutory powers to do so. The constitutional background to Parliamentary democracy, and the ability of ministers to make laws by issuing regulations, is discussed in *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, paras [41] and [46]. A minister can only issue regulations and the like if authorised to do so by statute.

132. The statutory background to the Welsh and Scottish regulations was different, but it is not necessary to describe this in detail because nothing turns on the difference. Those regulations were also made by Welsh and Scottish ministers pursuant to statutory powers.

133. I agree with the Claimants' submission that the various regulations are indeed a paradigm example of action by a "Statutory Authority" within the meaning of the relevant clause. This is because the clause provides cover, as the Claimants submitted, for interference resulting from the action of any person, body or entity which has lawful authority derived from statute or statutory instrument to prevent access to the premises following a relevant danger. Indeed, I consider that Mr Scorey's submission in paragraph 19 of his skeleton argument is broadly correct: statutory authority means an authority which derives its authority from statute, or which owes its existence to statute. These are alternatives, and in my view a reasonable policyholder reader of the policy would not consider it necessary to enquire into the historical or legislative origin of the person or body that has exercised a statutory power. It is sufficient that the person or body is exercising authority which is derived from statute. In the present case, Mr Hancock and the Welsh and Scottish ministers who made the regulations, all derived their relevant powers from statute.

134. In my view, this is a simple and obvious approach to "Statutory Authority". It explains why the insurers in the *FCA test case* did not challenge the proposition, ultimately recorded in the declarations made both by the Divisional Court and the Supreme Court, that:

> "The UK Government is a government, governmental authority or agency, public authority … and/or statutory authority within the different wording to this effect in [various] Wordings"

135. Furthermore, a materially identical issue was argued out before Cockerill J in *Corbin & King*, albeit that the point was only raised by Axa late in the day. Cockerill J had no doubt as to the answer, in the context of a clause which referred to "any other statutory body". She said at paragraph [183]:

> "While Axa contends that the wording for the authority tends to suggest locality (police coming first), it cannot escape from the fact that the wording "*any other statutory body*" is manifestly wide enough to encompass central government. This was accepted in Axa's pleading and its attempts to move away from this position did not gain traction, particularly in the light of the Supreme Court's declarations paragraph 9 which makes plain

> that the UK Government is a statutory authority for the purposes of clauses of this nature".

136. Despite Mr Scorey's arguments, I see no reason to take a different view to that expressed by Cockerill J. In so far as Cockerill J in paragraph [183] –and indeed in paragraph [202] (vi) – expresses a different view to the obiter view of MacDonald J in paragraph [198] of *Brushfield*, it is appropriate for me to follow the approach taken by Cockerill J. Indeed, Cockerill J gave substantial reasons in paragraph [202] for disagreeing with MacDonald J on the principal point argued in *Brushfield* and *Corbin & King* concerning the question of coverage for a nationwide pandemic under the NDDA clause there in issue. I have not been persuaded that Cockerill J was wrong, let alone clearly wrong, on any of these points. I was also told that, in relation to the issue addressed in paragraph [183] of Cockerill J's judgment, Axa did not seek permission to appeal.

137. The substance of Liberty Mutual's principal argument was that the expression "Statutory Authority" was concerned exclusively with the status of the originator of the restrictions and was not a reference to the nature of the powers being exercised. I do not consider that any reasonable policyholder would understand the expression in such a restrictive fashion. In saying this, I derive comfort from the fact that this point was not even argued in the *FCA test case*, and that Cockerill J concluded that the clause had a wide ambit.

138. However, even leaving that latter point aside, it seems to me that Liberty Mutual's approach, if accepted, would result in an inquiry into the constitutional and legal origin of the originator of the relevant restrictions. Such an inquiry would, as the argument in the present case illustrates, lead to the need to consider such matters as the statutory origin of the position of the Secretary of State for Health and Social Care, and the impact of the statutory instrument which made the holder of that office a "corporation sole". All of this is in my view a long way from the approach which should be taken to the construction of what in my view (and also that of Cockerill J) are the obviously wide words "Statutory Authority" in the present policies. A pedantic lawyer might be interested in the constitutional and legal origin of the originator of the relevant restrictions. I do not consider that it would occur to the reasonable ordinary policyholder (or indeed insurer) that the words "Statutory Authority" required the examination posited by Liberty Mutual's argument.

139. Nor did I consider that Liberty Mutual's argument was improved by the reliance placed on the reference to the "Police" in the wording. It is true that the organisation of police forces around the country is now on a statutory footing. However, if one asks whether the police "owed their existence to a statute" (the relevant test identified in Mr Scorey's written submission), then the answer would be that they do not. Mr Gruder referred to various passages in Halsbury's Laws Volume 84 and 84A dealing with Police and Investigatory Powers. Those paragraphs indicate that the origin of the police lies in the common law office of constable. Paragraph [2] headed "The police constable" states as follows:

> "Various enactments were passed in the nineteenth and twentieth centuries providing for the establishment of police forces comprising constables appointed in the manner laid down in the relevant enactment, and the organised police force was thus

> superimposed on the office of constable. Powers were not conferred on members of police forces as such, but a member of a police force maintained for a police area and every special constable appointed for a police area is, on appointment, attested as a constable by making a declaration, and a member of a police force now has all the powers and privileges of a constable throughout England and Wales and the adjacent United Kingdom waters and not merely within his own area. The authority of a member of a police force arises directly from his attestation and his status is derived from that of the common law constable."

140. If it is correct that a historical examination of whether the police owed their existence to a statute would reveal that they do not, then this would serve to negate the proposition that the words "Statutory Authority" referred exclusively to authorities which owed their existence to statute. In any event, for reasons already given, I do not consider that the interpretation of the policy should require this sort of historical examination.

141. The other aspect of Liberty Mutual's argument, based on the police, concerns their "local" character. However, as Mr Scorey accepted, and as is clear from paragraph [72] of *Certain Policyholders v China Taiping Insurance (UK) Co Ltd* (the "*Taiping* award"), not all police are in fact "local". Even if they were, I do not see how this can then lead to Liberty Mutual's restrictive interpretation of "Statutory Authority" in the clause which I am considering. The supposedly local character of the police does not mean that "Statutory Authority" should be interpreted as being confined to an authority owing its existence to statute. Nor is there anything in those wide words which confines them to "local" statutory authorities.

142. Having considered the various arguments concerning the police, I agree with Mr Kramer's reply submission that there is no coherent aspect of the police, identified in Liberty Mutual's submissions, that a reasonable reader would understand as delimiting the meaning of "Statutory Authority". In paragraph [183] of *Corbin & King,* Cockerill J rejected an argument that "police coming first" had any impact on the wide wording "any other statutory body". I agree.

143. Accordingly, I accept the principal submissions of Mr Gruder and Mr Kramer, as summarised above, as to the meaning of "Statutory Authority".

144. It is not necessary to decide whether, if Mr Scorey's narrow construction were accepted, the Secretary of State for Health and Social Care would qualify as a "Statutory Authority" by reason of the statutory instrument which makes that position a corporation sole. For reasons given, I do not consider that this sort of inquiry is necessitated by the relevant clause. If, however, such an inquiry were required, then I would hold that the Claimants succeed on that issue as well. The relevant regulations in England were made by the legal person (i.e. the corporation sole) that, as a result of delegated legislation, is the Secretary of State for Health and Social Care. That corporation sole is the authority which made the relevant regulations, and that legal person is statutory in the sense that Mr Scorey submits is necessary: the legal person has been created by statute. I would reject the fine distinction Mr Scorey sought to draw, in this regard, between statute and statutory instrument. No reasonable policyholder, when considering whether a body is a "statutory authority", would be concerned to

draw a distinction between a body created by statute, or by delegated legislation made pursuant to a statute.

145. It is therefore also unnecessary to address Mr Gruder's alternative argument based upon the proposition that the various regulations were to be enforced by the police. This argument comes more to the fore in the International Entertainment Holdings case, where the relevant clause referred to "any policing authority". As will be apparent from my discussion of the point in that context (see Section G below), I would not have accepted Mr Gruder's alternative argument had it been a critical point. On that point, I agree with Mr Scorey that the "Police" limb has no application: whilst the police were involved in monitoring compliance with Covid-19 restrictions, they were not the body actually interfering with the Claimants' business by forcing them to close.

146. I therefore answer Issue 1 as follows: **The interferences with the businesses of the Gatwick Claimants, Hollywood Bowl, Fullers, and the Starboard Claimants (as pleaded in the Particulars of Claim) arose in consequence of "action by the Police or other Statutory Authority" which prevented or hindered use of the Premises or access thereto.**

Hollywood Bowl

147. Issues 4 and 5 arise only in Hollywood Bowl and are as follows:

Issue 4:

In relation to the Claimants' premises, did the 4 July 2020 Regulations (or the equivalent Regulations in Scotland and Wales) introduce new restrictions which came into force on the date the Regulations came into force i.e., 4 July 2020 in England, 13 July 2020 in Wales, and 15 July 2020 in Scotland and which continued throughout the "*emergency period*"?

Issue 5:

Or, as the Defendant contends, was the practical effect of the Regulation introduced on 4 July 2020 that the Claimant's premises (previously closed by the 26 March Regulations) remained closed for the "*emergency period*"?

148. The key question here is whether or not the 4 July Regulations introduced new restrictions. This is potentially relevant because, in summary, Hollywood Bowl (and indeed other Claimants) contend that each new restriction qualifies as a separate interruption or interference for the purposes of making claims under the policies. Hollywood Bowl contends that new restrictions were introduced. Liberty Mutual contends that there was no material change: Hollywood Bowl's premises simply remained closed, as they had done since March 2020.

The factual background

149. The relevant factual and legal background is set out in the Agreed Facts in the Hollywood Bowl proceedings, and was as follows.

150. Regulation 4(4) of 26 March Regulations provided that:

> "Any person responsible for carrying on a business or providing a service which is listed in Part 2 of Schedule 2 must cease to carry on that business or to provide that service during the emergency period."

151. The businesses listed in Part 2 of Schedule 2 included (amongst other things) indoor fitness studios, gyms, swimming pools, bowling alleys, amusement arcades or soft play areas or other indoor leisure centres or facilities, as well as cinemas, theatres, nightclubs, bingo halls, and concert halls. The categories specified in Part 2 of Schedule 2 included businesses operated by Hollywood Bowl.

152. Similar regulations applied in Scotland and Wales: the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (2020 No 103) and the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (2020 No.353 W 80).

153. On 4 July 2020, the 26 March Regulations were revoked and replaced by the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (SI 2020/684) in England.

154. In relation to certain establishments such as cafes and restaurants the restrictions were eased. However, Regulation 4 provided that:

> "a person responsible for carrying on a business or providing a service which is listed in Schedule 2 must cease to carry on that business or to provide that service during the emergency period."

155. The businesses listed in schedule 2 included bowling alleys, indoor play areas, including soft play areas, indoor fitness and dance studios, indoor gyms and sports courts and facilities. The categories listed in Schedule 2 included businesses operated by Hollywood Bowl.

156. Hollywood Bowl's premises in England were not permitted to open until 15 August 2020, and then only on the basis of strict social distancing.

157. Although restrictions for hospitality venues in Scotland were eased from 15 July 2020, Hollywood Bowl's premises were not permitted to open at that time. Its premises in Scotland were forced to close until 31 August 2020. Although hospitality venues in Wales were permitted to reopen on 13 July 2020, their premises in Wales were forced to close until 3 August 2020.

158. In addition to the Agreed Facts, I was referred to the 4 July Regulations themselves. Paragraph 4 (2) contained a limited exception to the requirement that a Schedule 2 listed business must cease to carry on during the emergency period. The requirement to cease did not apply to any suitable premises used for businesses or services to host blood donation; facilities for training by elite sportspersons; and indoor fitness and dance studios by professional dancers and choreographers.

The parties' arguments

159. For Hollywood Bowl, Mr Gruder submitted that the 4 July Regulations introduced new restrictions in England, as did the equivalent regulations in Wales and Scotland. The 26 March Regulations were revoked and therefore ceased to be applicable. New and different restrictions were imposed to those previously in force. Certain specific use of businesses otherwise required to cease (such as those operated by Hollywood Bowl) were permitted: Regulation 4 (2) allowed for the use of facilities by elite sportspersons or professional dancers and choreographers. A new emergency period started on 4 July 2020. The restrictions imposed by the 4 July Regulations were not, therefore, merely a continuation of those which had previously been in force. Instead, a new regulatory regime was introduced in relation to Hollywood Bowl's business. There was a further and different restriction from what went on before: it was a further restriction or a further occurrence.

160. The same analysis applied to the equivalent regulations in Wales. There were, however, no equivalent regulations in Scotland, and therefore the present issue does not fall for determination in relation to premises in Scotland.

161. It was, as Mr Gruder said in his oral submissions, a very simple point. The 26 March Regulations caused the bowling alleys to close and the indoor golf centres also to close. The new 4 July Regulations imposed a new period where these premises had to close for the emergency period and that period started on 4 July 2020 when the new regulations came into force.

162. For Liberty Mutual, Mr Scorey submitted that the practical effect of the 4 July Regulations (and the equivalent regulations in Wales) was simply to continue the closure of Hollywood Bowl's premises. They were closed, pursuant to the 26 March Regulations, before the 4 July Regulations came into effect, and they remained closed afterwards. The later regulations therefore merely continued the same regime of restrictions. There was therefore a "continuum of closure". There was not even a scintilla of time between the revocation of the 26 March Regulations and the introduction of their replacement in July. There were no qualitatively altered restrictions in July: because (as Mr Scorey put it) "a closure is a closure is a closure". Nothing changed in July. There was no significance to the change in regulations: the status quo remained the same. Other businesses may have been permitted to reopen, but that was not the case with Hollywood Bowl.

Discussion

163. Both parties agreed that this was a very short point. I consider that the submissions of Mr Scorey, as summarised above, were more persuasive than the contrary argument of Mr Gruder. There was indeed a continuum of closure as far as Hollywood Bowl is concerned. It was an agreed fact that their premises in England were not permitted to open until 15 August 2020, and accordingly the limited exceptions in the July Regulations (blood donation etc) were of no relevance to Hollywood Bowl. There was, as Mr Scorey submitted, nothing at all which changed in July, except for the identity of the regulations pursuant to which Hollywood Bowl's premises remained shut. Against the factual background described above, I do not consider that it can sensibly be said that there were new restrictions.

164. Accordingly, I answer issue 4: **No**

and issue 5: **Yes.**

Liberty Retail

165. **Issue 6:**

Were the pleaded actions taken by a Statutory Authority or Police within the meaning of the PoA Extension (as defined in the Particulars of Claim)?

166. This issue in the Liberty Retail proceedings is the same as issue 1 in Gatwick and others, and has therefore already been addressed.

167. For the reasons given in relation to Issue 1, I answer this question as follows: **Yes – the pleaded actions were taken by a Statutory Authority within the meaning of the PoA Extension (as defined in the Particulars of Claim).**

168. **Issue 7:**

Can past, present and/or future cases of COVID-19 within the one mile radius of the Premises (Radius Cases) constitute a danger or disturbance within the meaning of the PoA Extension?

169. The parties were agreed that the answer to this question is: **Yes, as to past and present cases.**

E: LMIE Wordings: Limits issues

Introduction to the issue

Gatwick

170. Issues 9 and 10 concern the various Gatwick claimants. The issues are as follows:

Issue 9:

Is the Defendant bound to indemnify each Claimant in respect of each of the Claimants' premises up to a maximum amount of £1,000,000 with an Indemnity Period of 6 months in respect of each separate interference with the Claimants' businesses particularised in paragraph 38(1) to 38(5) of the Re-Re-Amended Particulars of Claim?

Issue 10:

Or, as the Defendant contends, is the express Limit of Indemnity of £1,000,000 applicable to each of the premises?

171. Similar issues arise in relation to all the other policies issued by Liberty Mutual, except for Bath Racecourse.

172. The relevant POAND clause in the Gatwick policy was as follows:

> "PREVENTION OF ACCESS (NON DAMAGE)
>
> Under Business Interruption loss following interference with the Business carried out by the Insured in consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises which shall prevent or hinder use of the Premises or access thereto or, interference with the Business carried out by the Insured.
>
> Provided that the Company shall not be liable under this extension for more than the amount shown against this extension in the Schedule.
>
> Subject to the terms, Conditions, limits and Exceptions of this Policy"

173. The clause therefore referred to the "amount shown against this extension in the Schedule". The amount shown in the relevant policy Schedule (which I will describe in context in more detail) was £ 1,000,000.

The parties' arguments

174. The broad shape of the parties' arguments was as follows.

175. On behalf of Gatwick, Mr Gruder submitted that the £ 1,000,000 applied on a "per restriction" and "per premises" basis. Gatwick's pleaded case was that there were 5 relevant restrictions and that each would therefore qualify as a separate interference attracting a £ 1,000,000 limit for each of the premises. The "per premises" argument was of no real significance in the context of Gatwick; because each Gatwick claimant only owned one hotel, and therefore there was not a multiplicity of premises which could attract the £ 1,000,000 limit for each restriction. The argument was, however, of significance in relation to other policyholders, specifically Hollywood Bowl and Fullers, where there was a single policy covering the multiple premises owned by a single insured. The argument was also potentially relevant to the Starboard claimants, in the event that I were to decide the "composite" policy issue against them.

176. Mr Gruder argued that the POAND endorsement had to be considered on its own terms. It clearly required reference to the relevant policy Schedule, and this contained the figure of £ 1,000,000 under the heading "Limit". The final words of the POAND endorsement also referred to the "limits" of this Policy. He submitted, however, that neither the word "Limit" in the policy Schedule, nor the word "limits" at the end of the POAND endorsement, was defined elsewhere in the policy. It was therefore wrong to read these undefined terms as a reference to the defined term "Limit of Indemnity" which was contained in the standard policy terms. The draftsperson had not referred, either in the POAND endorsement, or in the policy Schedule, to "Limit of Indemnity". If the intention had been to refer to the defined "Limit of Indemnity", then the draftsperson would have done so, as was done in other provisions of the policy. This was not the result of oversight or mistake: it was the deliberate use of the undefined term "limit".

177. The figure of £ 1,000,000 was therefore not to be equated with a limit of indemnity (or Limit of Indemnity). It was only a "limit" in the sense of being, or being equivalent to, a "sum insured". This meant that £ 1,000,000 was the maximum payable for any claim

under the POAND head of cover. Since it was not a reference to the "Limit of Indemnity", there was no basis for saying that the £ 1,000,000 operated on the basis of the aggregation which was provided for in the policy definition of Limit of Indemnity: i.e. "for any loss or series of losses arising from any one occurrence". It followed that the Gatwick claimants could claim £ 1,000,000 for each restriction affecting the particular hotel that each claimant owned. All the other Claimants represented by Mr Gruder, except for Hollywood Bowl, had a similar £ 1,000,000 limit. The Hollywood Bowl Limit was £ 500,000. 'Each of these claimants could similarly claim £ 1,000,000 or £ 500,000 for each restriction in respect of each of the premises which they owned.

178. If this argument were rejected, then Mr Gruder's fallback position was that the relevant limit of the POAND cover was (in the case of Gatwick) £ 1,000,000 "any one occurrence" as specified in the Limit of Indemnity definition. However, this was very much Mr Gruder's secondary case.

179. On behalf of Liberty Mutual, Mr Scorey advanced essentially three lines of argument. Two of these arguments, referring to different sections of the policy, were in support of the proposition that the £ 1,000,000 figure in the policy Schedule under "Limit" was in fact an "aggregate" limit applicable to all claims under the POAND clause during any period covered by the policy. Accordingly, Gatwick could never claim more than £ 1,000,000 under the POAND cover, irrespective of how many separate restrictions there were.

180. Liberty Mutual's fallback position, if it was wrong on its "aggregate" limit argument, was that the £ 1,000,000 operated on the "per occurrence" basis which was provided for in the Limit of Indemnity definition. This would potentially mean, in the case of Covid-19, that there could be more than one claim of up to £ 1,000,000, depending on how many separate "occurrences" there were. However, it was ultimately common ground that the court should not, at the present stage, address the question of how many occurrences there were in the Gatwick case, or indeed in any of the other cases. This was a question which could potentially be impacted by the decision of the Court of Appeal in *Stonegate,* and it had been agreed with other claimants (e.g. Liberty Retail and Fullers) that this question, namely the number of occurrences, should be deferred.

181. Liberty Mutual's argument, both on annual aggregation and on the fallback "any one occurrence", were supported by Mr Ryan on behalf of Aviva in the context of the Fullers proceedings. Aviva was not itself an insurer of the Gatwick Claimants, but it was affected by these issues argued in Gatwick because it was an insurer of Fullers. Mr Ryan adopted Mr Scorey's submissions on the "aggregation" issue; i.e. whether or not the £ 1,000,000 was an overall annual aggregate. However, the principal focus of Mr Ryan's submissions – both written and oral – was to argue in favour of the £ 1,000,000 being an "any one occurrence" limit. Accordingly, he submitted that the relevant use of the words "Limit" and "limit" in the policy was a reference to "Limit of Indemnity" as defined in the definitions section. None of the policies therefore operated on the basis of the "per restriction" and "per premises" approach for which Mr Gruder contended.

182. On behalf of Liberty Retail, which was also affected by this debate, Mr Kramer KC took the following position. Liberty Retail accepted that the POAND "Limit" of £ 750,000 in its policy Schedule was indeed a reference to "Limit of Indemnity" as defined. It was, therefore a "per occurrence" limit. To that extent, Mr Kramer's submissions differed from those of Mr Gruder. However, as with the claimants

represented by Mr Gruder, Liberty Retail disputed Liberty Mutual's argument that this "any one occurrence" limit was also an annual aggregate limit.

183. The key clauses relevant to the parties' arguments were relatively few in number. Liberty Mutual's "annual aggregate" argument was based upon two provisions: (i) the "Insuring Clause" for the Business Interruption cover contained in Section 2 of Liberty Mutual's standard policy wording; and, alternatively, (ii) the POAND endorsement itself. The definition of "Limit of Indemnity" is also a key provision, as is the reference to "Limit" in the policy schedule.

184. In addition to these clauses, the parties referred to a number of other policy provisions which were said to throw light on the approach to the issues. In the discussion that follows, I identify the structure of the policy and the principal clauses and arguments of the parties based upon those provisions. Since I am here dealing with issues 9 and 10, which concern the Gatwick Claimants, I will refer to the provisions of that policy, and will discuss any relevant differences in the other policies when considering the issues that arise on those policies.

The structure of the policy and the principal clauses relied upon

185. The Gatwick policy, including endorsements, ran to 107 pages. The front page describes the policy as a "Commercial Combined Policy". The name "Liberty Specialty Markets" and itslogo appear on all pages. A critical document is tThe "Commercial Combined Schedule" ("the policy Schedule"), which runs for 15 pages. The final pages of the policy Schedule contain a list of endorsements. The POAND endorsement is number 8. This is followed by 66 numbered pages of standard printed terms. The remaining pages comprise a large number of endorsements, albeit not in the same order as the earlier list.

The policy Schedule

186. The first page of the policy Schedule identifies such matters as the Insured and the Period of Insurance. (I use capitalised terms where the policy does so.) The remaining pages of the Schedule refer to each head of cover, for example Material Damage and Business Interruption, and set out various figures.

187. Thus, Section 1 in the policy Schedule (headed Material Damage) contains, at the top of its first page, a number of column headings, with 9 items then listed, illustrated by the following:

The Property Insured

Item No	Description	Declared Values GBP	Limit of Indemnity GBP
1	Buildings	41,000,000	51,250,000

…

Total Material Damage	44,225,000	55,273,750

188. The second half of that page (and continuing overleaf) comprises 15 items set out under various column headings, illustrated by the following:

Inner Limits of Liability

Inner No	Limit Description	Limit of Indemnity GBP
1	Directors' Employees Visitors Personal Effects	500 any one person
2	Employee Tools	500 of any one employee
3	Computer Systems Records	10,000 any one occurrence
4	Patterns, Models, Moulds plans & designs	20,000 any one occurrence

189. There was no dispute that the "Limit of Indemnity" on this page referred to that expression as defined later in the standard policy terms. There was also no dispute that none of these figures, for Material Damage, were "aggregate" limits. They were, in most cases, "any one occurrence" limits, and Mr Scorey did not suggest that they were also annual aggregate limits. This was because there was no "annual aggregate" stated against any of the figures, as the Insuring Clause in the Material Damage standard policy terms (at page 10 of 66) required.

190. The present claim does not, of course, arise from Material Damage to property. The significance of the Material Damage page of the policy Schedule, in Mr Gruder's argument, was that it contained a clear reference to the defined term "Limit of Indemnity". This was to be contrasted with the bare reference to "Limit" in the equivalent Business Interruption page of the policy Schedule. As previously described, he submitted that this was not the same concept as "Limit of Indemnity". He said that where there was an intention to refer to the defined term "Limit of Indemnity", the draftsperson was capable of saying so and did so. There was plenty of room on the page to do so.

191. Mr Gruder advanced a similar argument in relation to the fact that the draftsperson had specified that (in most cases) the Limit of Indemnity was "any one occurrence". Again, that was to be contrasted with the equivalent Business Interruption page of the policy

Schedule, where there was no reference to an "any one occurrence" limit. He submitted that this was because the relevant figures on the Business Interruption page were not "any one occurrence" limits of liability.

192. The "Business Interruption" part of the policy Schedule comprises 2 pages, illustrated by the following:

BASIS OF COVER

	Description	**Declared Values GBP**	**Limit of Indemnity GBP**	**Maximum Indemnity Period (months)**
1	Gross Profit including Increased Costs of Working - Declaration Linked Basis	Not Insured		
2	Gross Revenue including Increased Costs of Working - Declaration Linked Basis	26,500,000	35,332,450	36
3	Rent Receivable	Not Insured		
4	Additional Increase in Cost of Working		100,000	12
5	Additional Increase in Cost of Working		250,000	
6	Fines & Damages		Not Insured	
7	Research Establishment Expenditure		Not Insured	
	Total Business Interruption	26,500,000	35,682,450	

BUSINESS INTERRUPTION EXTENSIONS

Description	**Limit GBP**	**Maximum Indemnity Period (months)**

1	Specific Suppliers	Not Insured	
2	Unspecified Suppliers	250,000	12
3	Prevention of Access	1,000,000	6
…			
13	Infectious Diseases	Not Insured	
14	Infectious Diseases (including Food Safety Act 1990)	250,000	3
15	Prevention of Access (Non Damage)	1,000,000	6
16	Loss of Attraction	500,000	12

193. The next section of the policy Schedule, Section 3, was a head of cover (Terrorism Insurance) which was not insured.

194. Section 4 was headed Money Insurance. This contained a number of figures under the heading "Limit of Indemnity". The Limit of Indemnity for any "single loss of Money" was, with certain exceptions, £ 10,000. The Limit of Indemnity for any "single loss" of crossed cheques (and other matters) was £ 250,000. There was then an extension covering Personal Accident Assault. Again, there was a column headed "Limit of Indemnity", with various figures (for death, loss of sight etc) set out. Mr Gruder's point, again, was that the draftsperson had specified "Limit of Indemnity" where there was an intention to refer to that defined term, although he also made the point that none of the relevant limits on that page were based upon "any one occurrence".

195. Section 5 was headed "Computer Equipment All Risks". There were various figures under columns again headed "Limit of Indemnity". Section 6, covering Goods in Transit, similarly had figures under a column headed "Limit of Liability". Section 7, covering Employers Liability, had figures listed under "Limit of Indemnity", with the limits and sub-limits expressed to apply "any one Event".

196. Sections 8 and 9, headed Public/Products Liability, provided for a Limit of Indemnity of £ 15 million under each of Section 8 and Section 9. However, in relation to Section 9, the limit was expressed to be on the basis of "any one Event and in the aggregate for the Period of Insurance". A sub-limit of £ 500,000 for "Data Protection" also applied "in the aggregate for the Period of Insurance". Mr Gruder made the point that where an aggregate limit was intended, the draftsperson was capable of saying so in clear terms.

197. The final page of the Schedule was headed "Terms of Cover". This listed out 19 endorsements, including the POAND endorsement. The endorsements themselves were contained in the final pages of the policy.

The standard policy terms.

198. The standard terms begin (page 1 of 66) with a "Guide to this Policy – Sections 1- 9", as follows:

> "This is your Commercial Combined Policy, a legal document which sets out the insurance cover you have requested and which we have agreed to provide.
>
> Like most commercial policies, the language of this Policy is quite formal. Please read it carefully, including the Schedule, and ensure you understand it fully. Please contact your insurance broker immediately if anything needs correcting, or if anything is not clear to you.
>
> The Policy has separate sections for the different types of cover you have purchased. In each section is an insuring clause which, with any Extensions, set out the initial scope of cover. Then there are Exceptions, which exclude certain elements of that cover. Finally there are Conditions, which contain important provisions which you should comply with in order to avoid potential problems.
>
> The policy has a "private dictionary" – words with a special meaning are listed in alphabetical order in the definitions section, and those words always appear with a capital letter. Also, there are some extensions, exceptions and conditions that apply to more than one Section, and to enable you to find the relevant clauses there are signposts where necessary."

199. The policy then sets out an "Indemnity Agreement":

> "Liberty Mutual Insurance Europe SE (hereinafter referred to as the Company) in consideration of the Insured having paid or agreed to pay the premium will, subject to the terms, Exceptions, Conditions, Endorsements, applicable Limits of Indemnity, Inner Limits of Indemnity (as shown in the Schedule) and Deductible(s) or Self-Insured Retention(s) of this Policy, indemnify the Insured against all sums that the Insured shall become legally liable to pay as stated in any operative Section of this Policy, which arises in connection with the Business."

200. Mr Gruder made the fair point that the drafting of this Indemnity Agreement was poor. The Indemnity Agreement would be well suited to a liability policy. Whilst, however, there was some third party liability cover under the policy, the main heads of cover were in respect of first party property risks. Mr Gruder's submissions also highlighted other deficiencies in the drafting of the policy: for example, the use of the word "limit" and "Limit", without any definition in the policy.

201. *Definitions:* There are then 7 pages of definitions, including the following which were relevant to the argument in relation to policy limits:

> "**Limit of Indemnity** shall mean:
>
> (a) for the purposes of Sections 1 to 6, the total liability of the Company for all amounts payable in accordance with the Insuring Clause under these Sections for any loss or series of losses arising from any one occurrence as stated in the Schedule. For the avoidance of doubt the Limit of Indemnity is inclusive of the relevant Deductible stated in the Schedule.
>
> (b) for the purposes of Sections 7 to 9, the total liability of the Company for all amounts payable in accordance with the Insuring Clauses under these Sections, and shall not exceed the amount(s) stated in The Schedule. For the avoidance of doubt, for the purposes of Sections 7 to 9, the Limit of Indemnity is in addition to the relevant Self-Insured Retention stated in the Schedule."

202. *Section 1 - Material Damage*. As stated above, the claim in the present case is not in respect of material damage to property. However, the Insuring Clause was referred to in the context of the parties' arguments as to whether the POAND extension was subject to an annual aggregate limit. This clause provided:

> "This Section shall cover, in accordance with the Indemnity Agreement, Damage to any of the Property Insured for which a Limit of Indemnity or Inner Limit of Indemnity is stated in the Schedule. The Company will pay to the Insured the values of such property at the time of the Damage or the amount of the Damage or at the Company's option reinstate or replace such Property Insured or any part thereof.
>
> Provided that the liability of the Company during any Period of Insurance shall in no case exceed, in respect of each Item, the relevant Inner Limit of Indemnity in the Schedule or in the aggregate any aggregate Limit of Indemnity in the Schedule."

203. Various provisions within Section 1 referred to the "Limit of Indemnity" in the Schedule: for example, the cover in respect of Glass provided that the "Limit of Indemnity" shall not exceed the amounts stated in the policy Schedule; i.e. "50,000 any one occurrence".

204. *Section 2 – Business Interruption*. This section begins with an Insuring Clause as follows:

> "In the event that any Building or other property, used in connection with the Business, has suffered Damage and as a result the Business carried on by the Insured is interrupted or interfered with, the Company will pay to the Insured in respect of each Item as stated in the Schedule the amount of loss resulting from such interruption or interference as calculated in accordance with the Basis of Cover Applicable to Section 2.

> Provided that:
>
> 1. at the time of the Damage, there shall be in force an insurance covering the Premises against such Damage and:
>
> a) payment has been made or liability shall have been admitted; or,
>
> b) liability would have been admitted but for the operation of a proviso in such insurance excluding liability for losses below a specified amount.
>
> 2. the liability of the Company under this Section shall not exceed:
>
> (a) the aggregate Limit of Indemnity as stated in the Schedule;
>
> (b) the relevant Limit of Indemnity remaining after deduction for any other interruption or interference occurring during the Period of Insurance, unless the Company shall have agreed to reinstate the Limit of Indemnity."

205. There then followed provisions concerning the "Basis of Cover" applicable to Section 2. These provisions linked to the "Basis of Cover" set out in the first part of the policy Schedule for Section 2 – Business Interruption, set out above. It is, however, not necessary to describe or analyse these provisions.

206. Pages 17 and 18 of the standard terms then set out a number of "Extensions Applicable to Section 2". Clause 1 provides as follows:

> "**1. Loss following Damage to property and not otherwise excluded**
>
> Loss resulting from interruption of or interference with the Business in consequence of Damage to property as specified below and occurring within the Geographical Limits shall not exceed:
>
> (i) the percentage of the total of the Limits of Indemnity or 133.33% of the Estimated Gross Profit;
>
> or,
>
> (ii) the Limit of Indemnity and Maximum Indemnity Period shown in the Schedule."

207. There then follow a number of sub-paragraphs of Clause 1 which correspond to items 1 – 12 on the policy Schedule for Section 2. For example, Clause 1 (a) refers to damage to the property of suppliers detailed in the policy Schedule (which in fact was uninsured), and Clause 1 (b) refers to damage to the property of various other suppliers.

208. Clause 2 provided for cover for Infectious Diseases, thus corresponding to item 13 on the policy Schedule for Section 2, albeit that item 13 stated that Infectious Diseases was not insured.

209. There is then a clause, in bold, which provides:

> "**Proviso 1 in the Insuring clause to Section 2 shall not apply to the above Extensions**".

The policy then refers to the Exceptions and Conditions which appear later in the standard terms of the policy.

210. *Later sections.* The policy then contains the terms applicable to the other sections of cover. The cover provided in respect of some of these refer to the "Limit of Indemnity" in the policy Schedule. For example, the Insuring Clause for Computer Equipment All Risks refers to the provision of cover for "Damage to any of the Property Insured for which a Limit of Indemnity is stated in the Schedule". The Insuring Clause for the Goods in Transit cover in Section 6 does not itself refer to the Limit of Indemnity, but the extensions to that cover (on page 23 of the standard form) refer to sums which Liberty Mutual will pay "in addition to the relevant Limit of Indemnity".

211. There are then various exceptions (pages 32 - 40 of the standard terms), and conditions (pages 41 – 52). One of the conditions applicable to Section 2 is an "Automatic Reinstatement" provision:

> "In the absence of written notice by the Company or the Insured to the contrary the insurance by Sections 1, 2 and 5 shall not be reduced by the amount of any loss and in consideration the Insured shall pay the appropriate extra premium on the amount of the loss from the date thereof to the date of the expiry of the Period of Insurance. This shall not apply to losses that are covered under Section 3."

212. *The endorsements:* Following a separate section of the printed standard terms providing legal expenses insurance, there are various endorsements. These (including the POAND endorsement) all conclude with the words:

> "Subject to the terms, Conditions, limits and Exceptions of this Policy"

213. The word "limits" does not therefore begin with a capital letter.

214. One of the endorsements is headed "GROSS REVENUE INCLUDING INCREASE IN COST OF WORKING – DECLARATION LINKED BASIS". This provision therefore links to "BASIS OF COVER" for Business Interruption in Section 2 of the policy Schedule. The standard policy terms provide for cover for Gross Profit, but the policy Schedule provides that this was not insured. Instead, the insurance was on a "Gross Revenue" basis, and it is this endorsement which explains the basis of cover. It is here that the provision relevant to the furlough argument is contained.

215. Another endorsement is headed: "INFECTIOUS DISEASES (INCLUDING FOOD SAFETY ACT 1990)". This therefore links to item 14 in Section 2 of the policy Schedule, which specifies a "Limit" of £ 250,000. The endorsement itself provides:

> "The Company's limit of liability shall not exceed the limit stated in the Schedule".

216. Accordingly, there is here a reference to a "limit of liability", which (as with the word "limit" or "Limit") is not an expression used or defined elsewhere in the policy.

However, I do not consider that, ordinarily, there is any material difference between a limit of liability and a limit of indemnity.

217. Another endorsement is headed "LOSS OF ATTRACTION", thus linking to item 16 on Section 2 of the policy Schedule. This endorsement states:

> "Provided that this extension shall be limited to the amount stated in the Schedule for any one occurrence".

These words were repeated in a later endorsement which amended this head of cover.

218. Finally, towards the end of the Policy, is the POAND endorsement which is the basis of the claim made by Gatwick.

Discussion: "Limit" and "Limit of Indemnity"

219. I begin with the question of whether the relevant figure in the Section 2 policy Schedule for POAND cover (£ 1,000,000), as a "Limit", is to be read as a "Limit of Indemnity" as defined in the definitions section of the policy: i.e. as £ 1,000,000 for "any loss or series of losses arising from any one occurrence".

220. On this issue, I consider that the submissions made by the insurers were persuasive, and I prefer them to the contrary submissions made by Mr Gruder.

221. A reasonable policyholder reader of the figures under "Limit" in Section 2 of the policy Schedule, in the context of the policy as a whole, would in my view draw no distinction between "Limit" and "Limit of Indemnity". There is, in ordinary language and in the context of an insurance policy such as the present, no material difference between the concepts of a limit and a limit of indemnity, or indeed (to use the expression used in the Infectious Diseases endorsement and the Goods in Transit page of the policy Schedule), a "limit of liability". They all denote the maximum sum which the insured is liable to pay, and thus the limit on the policyholder's claim. These terms, as used in the policy, are in my view interchangeable, and no valid distinction can be drawn between them. The position would be different if the policy were to contain some different definition of "Limit", as opposed to "Limit of Indemnity". However, there is no definition of "Limit", and a reasonable reader would understand that this was because "Limit" is simply a shorthand for "Limit of Indemnity" which is defined.

222. The question remains, of course, as to how that limit applies in any particular case. The policy answers that question by specifying that the "Limit of Indemnity" is the total liability of Liberty Mutual "for any loss or series of losses arising from any one occurrence". That provision can apply, and in my view does here apply, whether one is dealing with a "Limit of Indemnity" or a "Limit" or indeed a "limit of liability". As a matter of construction, it will yield to any contrary agreement made between the parties. The policy Schedule indicates that in various respects there is a departure from the "any one occurrence" approach: for example, in aspects of Section 1 (Material Damage), Section 4 (Money Insurance) and Section 6 (Goods in Transit). However, as Mr Ryan submitted, "any one occurrence" is the default position.

223. Mr Gruder laid emphasis on the draftsperson's ability to specify "Limit of Indemnity" when there was an intention to refer to the relevant policy definition, and the failure to

do so in the policy Schedule in Section 2. I do not regard that point of any significance, in circumstances where there is no material distinction between a limit and a limit of indemnity, and where the policy contains no separate definition of the former. Moreover, the drafting of the policy is obviously not perfect. Mr Gruder criticised it in various respects, for example the way in which "Indemnity Agreement" is defined. I agree that, as Mr Ryan accepted, the draftsperson can fairly be criticised for using the shorthand and undefined word "Limit" in the policy Schedule Section 2. Similar criticism could be made of the use of the (small 'l') word "limits" in each of the various separate endorsements, or the expression "limit of liability" in the Infectious Diseases endorsement, and "Limit of Liability" in the Goods in Transit page of the policy Schedule. However, despite these imperfections, I consider that a reasonable reader would readily understand that there was no difference between the minor variations in terminology or capitalisation. As Mr Ryan submitted, the "Limit" in the policy Schedule was plainly in respect of the indemnity which the insurers would otherwise be liable to pay. It is thus a "Limit of Indemnity" as much as the other limits identified in the Schedule.

224. This conclusion is very strongly reinforced, when one considers the other covers that are listed under "Limit". As described above, items 1 – 12 are all directly referable to the extensions (Specified Suppliers, Unspecified Suppliers etc) which are provided for in Clause 1 ("Extensions applicable to Section 2") on pages 17 and 18 of the standard form. The opening words of Clause 1 (ii) refer expressly to the "Limit of Indemnity and Maximum Indemnity Period shown in the Schedule". Accordingly, in respect of those covers, there can be no doubt that the word "Limit" on the Schedule is indeed a shorthand for "Limit of Indemnity", and that there is no material difference between them. It follows that, in relation to those covers, the "any one occurrence" definition of "Limit of Indemnity" applies. There is in my view no persuasive reason why the "Limit" shown against the POAND extension in the policy Schedule should be read as being any different.

225. The next head of insured cover, on the Section 2 policy Schedule at item 14, is "Infectious Diseases (including Food Safety)". This refers to the "limit of liability" not exceeding "the limit stated in the Schedule". As discussed above, there is no material distinction between a "limit of liability" and a "limit of indemnity" or indeed a "limit". When read in the context of the covers for items 1 – 12 (or at least those of them which are insured), I consider that the policy Schedule "Limit" in respect of item 14 is therefore also to be read as subject to the "Limit of Indemnity" definition.

226. In the light of the fact that items 1 - 12, and indeed item 14, all provide for a "Limit" referable to the Limit of Indemnity definition, I consider that it is logical to take the same view of the "Limit" as applicable to item 15, the POAND cover. Indeed, the contrary argument posits that the word "Limit" is – at least in relation to the POAND cover – undefined, with no clue given as to how it is to be approached. This argument makes far less commercial sense than insurers' argument that all of the figures under "Limit" are referable to the "Limit of Indemnity" definition.

227. This conclusion is not negated by the cover for Loss of Attraction provided for in item 16 and the endorsements. This does indeed spell out that the extension "shall be limited to the amount stated in the Schedule for any one occurrence". Mr Gruder made the point that here the draftsperson was specifically stating that the loss was on the basis of "any occurrence", but had not done so elsewhere. He submitted that this showed that the

draftsperson recognised that "Limit" could not be equated with "Limit of Indemnity", and that it was therefore necessary to specify when a "Limit" was to apply on the basis of any one occurrence. In my view, however, there is no significance to that point. This is essentially an argument based on surplusage (i.e. that the "any one occurrence" language in the Loss of Attraction was unnecessary, if that was the default position). However, an argument based on surplusage is not usually, in the context of lengthy commercial documents, a powerful point. I do not consider that it has any strength here, particularly when viewed in the light of the fact that Items 1 – 12 and 14 all require reference to the "any one occurrence" provision contained in the Limit of Indemnity provision. The reference to "any one occurrence" in item 16 is therefore consistent with all of those other covers. I do not therefore accept that it shows that all of those other covers operated on a different basis to item 16.

228. Mr Gruder's submissions recognised the difficulty presented by the insurers' argument that many of the other extensions (within Section 2 of the policy Schedule) were referable to the "Limit of Indemnity". He submitted, however, that even if I were to accept insurers' case that some of extensions were to be so regarded, nevertheless the POAND cover was different. "Limit" in that context meant no more than the sum insured. As an alternative to his principal argument (that "Limit" could in no circumstances be equated with "Limit of Indemnity"), he submitted that the column for "Limit" fulfilled a dual function, depending on the precise terms of the endorsement being considered. In relation to the POAND cover, there was no reference in the relevant endorsement to "Limit of Indemnity", and therefore no reason to regard the word "Limit" in the policy Schedule as being such. I disagree. In my view, a reasonable reader of the policy Schedule would consider that all of the figures under "Limit" were to be looked at in the same way, at least unless otherwise clearly stated.

229. Mr Gruder also drew attention to the fact that the draftsperson did – particularly in the policy Schedule for Section 1 (Material Damage) – specify "any one occurrence" where this was applicable. He also referred to the fact that some of the covers in Section 1 and elsewhere were not on the basis of per occurrence aggregation. I did not consider that these arguments had any force in the context of the issue which I am considering. As Mr Ryan submitted, the policy works on a scheme of "per occurrence" aggregation. But it was open to the parties to agree, in respect of a particular type of loss, that aggregation should occur on a different basis: the general gives way to the particular. This can be seen in the policy Schedule for Section 1, where most of the covers are on a per occurrence basis, but where there some exceptions. Another example is the cover in Section 6 (for Goods in Transit), where the "Limit of Liability" is not on "any one occurrence" basis, but instead on the basis of any one consignment, vehicle, parcel, or "carrying by road hauliers".

230. Accordingly, I do not consider that the reasonable reader would conclude that there was any fundamental distinction between "Limit" and "Limit of Indemnity", whereby the former but not the latter resulted in per interference/ per premises cover. Rather, "Limit" is indeed simply a shorthand for "Limit of Indemnity". Thus, in the context of the £ 1,000,000 POAND cover (and indeed the other covers listed under "Limit" in the policy Schedule Section 2) the aggregation provisions in the definition of "Limit of Indemnity" apply equally to "Limit".

231. In my view, this answer leads to certainty and a commercially sensible result. The contrary argument posits that Limit is undefined and that there is a fundamental

dichotomy between "Limit" and "Limit of Indemnity". I was not persuaded that there was any sensible commercial rationale for that approach, and in my view it makes far less commercial sense than the insurers' argument on this issue.

Does the POAND endorsement provide for an annual aggregate limit for the POAND cover?

232. The insurers' argument was, here, based upon the final words of the POAND endorsement:

> "Provided that the Company shall not be liable under this extension for more than the amount shown against this extension in the Schedule".

233. In my view, this argument is effectively destroyed by the success of the argument of insurers which is considered above: i.e. that the "Limit" in the policy Schedule Section 2 was to be equated with "Limit of Indemnity" as defined in the policy. The "Limit" is therefore, by the express terms of the policy, an "any one occurrence" limit. I do not consider that the words of the POAND endorsement can reasonably be read as imposing any limit beyond the "any one occurrence" limit which is thus provided for in the policy Schedule. The final words of the endorsement simply mean that Liberty Mutual and Aviva are not liable under the POAND extension for more than £ 1,000,000 for any loss or series of losses arising from any one occurrence.

234. That conclusion is supported by the absence of any wording in the endorsement which indicates that the limit is an annual aggregate. In the absence of any such wording I do not consider that a reasonable reader would read the endorsement as containing anything more than a reference to the any one occurrence "Limit of Indemnity" which is provided for in the policy Schedule by virtue of the word "Limit".

235. I also consider that there is some further, albeit modest, support for that conclusion in Section 8 and 9 of the policy Schedule. There, the policy Schedule did expressly provide for coverage on the basis of "any one Event and in the aggregate". Accordingly, it was made clear that a particular figure was an aggregate limit. I say "modest", because in a very lengthy policy document such as the present, with various different sections of cover and imperfections in the drafting, one needs to tread carefully when considering arguments based on different wordings found elsewhere.

Does the Insuring Clause in respect of Section 2 provide for an annual aggregate for the POAND cover?

236. On behalf of Liberty Mutual, Mr Scorey's principal argument for an annual aggregate was based on the Insuring Clause for Section 2 – Business Interruption at page 15 of the standard terms. By contrast, this line of argument was not advanced by Mr Ryan in his skeleton argument for Aviva, albeit that orally Aviva did adopt Liberty Mutual's argument.

237. I do not accept this argument. Again, it is at least to a large extent destroyed by the conclusions which I have already reached as to (i) the success of the insurers' "any one occurrence" argument when construing the word "Limit" and (ii) the express terms of the POAND endorsement itself, which (as I have concluded) provides that Liberty Mutual is not liable under the POAND extension for more than £ 1,000,000 for any loss

or series of losses arising from any one occurrence, and does not provide for an annual aggregate.

238. This conclusion is reinforced by the position in relation to the various extensions in the policy Schedule Section 2. As previously discussed, the introductory words of Clause 1 (at page 17 of the standard terms) refer (at (ii)) to the "Limit of Indemnity and Maximum Indemnity Period shown in the Schedule". There is therefore here a reference simply to the "Limit of Indemnity"; i.e. the "any one occurrence" limit. There is no reference to any aggregate limit. Similarly, the "Loss of Attraction" endorsement refers to the amount stated "in the Schedule for any one occurrence". I do not consider that these provisions can be reasonably read as creating, in addition to a per occurrence limit, an annual aggregate limit. I do not consider that the coverage provided by the POAND endorsement, with the £ 1,000,000 "Limit" stated in item 15 of the policy Schedule, is any different.

239. The insurers seek to reach their conclusion by relying on the reference to "aggregate Limit of Indemnity" in the Insuring Clause which begins Section 2, Business Interruption. This refers to Liberty Mutual's liability not exceeding (a) the aggregate Limit of Indemnity as stated in the Schedule; (b) the relevant Limit of Indemnity remaining after deduction for any other interruption or interference (etc).

240. I do not, however, consider that these provisions in the Insuring Clause can be readily applied to the POAND extension, or indeed to the other extensions to the BI cover provided for in the policy. The context of these provisions in the Insuring Clause are, as stated earlier in the clause, Damage (defined as physical loss, destruction or damage) to any Building or other property used in connection with the insured's business. The extensions concern different property: generally speaking, damage to other property such as damage to the property of unspecified suppliers or public utilities. More importantly, the limits for the extensions are expressed differently. There is thus no reference, in Clause 1 of the "Extensions applicable to Section 2"to an "aggregate" Limit of Indemnity. There is simply an unadorned reference to the "Limit of Indemnity" in the Schedule. That is a reference to an "any one occurrence" limit, not an aggregate limit.

241. That conclusion is supported by considering, specifically, the Loss of Attraction endorsement. This endorsement is expressly on the basis of "any one occurrence". The insurers' aggregation argument would require that to be read as an exception to all of the other limits set out under Limit in the policy Schedule Section 2; in other words, that Loss of Attraction was the only cover written on a pure "any one occurrence" basis, whereas all the other figures were also aggregate limits, including the limit for POAND stated immediately above it. In my view, however, there is no reason to draw that distinction; particularly bearing in mind that there is no wording in the policy Schedule, or indeed in the POAND endorsement or the "Extensions applicable to Section 2", which clearly provides for an aggregate limit.

242. As Mr Kramer submitted in his reply submissions, the entirety of insurers' case on this issue is based on the word "aggregate" but this is not a defined term, and it is not enough to displace the per occurrence Limit of Indemnity basis. Indeed, it was Mr Ryan's submission (with which I have agreed) that the policy works on a scheme of per occurrence aggregation.

243. Even if the terms of the Insuring Clause on page 15 of the standard terms were in principle applicable to the POAND endorsement (and the other extensions), I am not persuaded that this would produce any different result. Paragraph 2 (a) refers to the "aggregate Limit of Indemnity as stated in the Schedule". However, the Schedule does not refer to any aggregate Limit of Indemnity: the word "aggregate" is not there, and "Limit" is a reference to the per occurrence Limit of Indemnity.

244. Mr Scorey relied upon paragraph 2 (b) which refers to the "relevant Limit of Indemnity remaining [etc]", but this is then qualified by "unless the Company shall have agreed to reinstate the Limit of Indemnity". As Mr Gruder pointed out, however, Condition 13 on page 42 does contain an automatic reinstatement in respect of Section 2.

245. Mr Scorey also referred to the final words of Section 2 (on page 18 of standard wording). These provide that: "Proviso 1 in the Insuring clause to Section 2 shall not apply to the above Extensions". Accordingly, Mr Scorey submitted that it must follow that Proviso 2 did apply to the above Extensions. For the reasons already given, however, I am not persuaded that "the above Extensions" are subject to an aggregate limit, in circumstances where Clause 1 (on page 17) refers simply to the "Limit of Indemnity" which is an "any one occurrence" limit. Even if that conclusion were wrong, the POAND endorsement is not one of the "above Extensions", and therefore any implication from these final words would not extend to the POAND endorsement.

246. Accordingly, I reject the argument that the POAND clause is subject to an aggregate limit. In my view, the relevant limit is "any one occurrence" as provided for in the Limit of Indemnity provision, and there is no aggregate limit.

247. In reaching the conclusion that a reasonable reader of the policy would not conclude that the POAND cover was subject to an annual aggregate, I derive some comfort that the insurers have been inconsistent, in their pleadings in the various cases, as to the existence or basis of an annual aggregate. Thus, whilst Liberty Mutual's pleading in Fullers advanced a case of an annual aggregate, the pleading in Hollywood Bowl suggested that the limit was per action by the police or other Statutory Authority, and a similar case was advanced in Liberty Retail. As already indicated, Aviva's case (both in its pleading and its written argument) was based on the POAND endorsement itself, with no reliance placed on the "aggregate" wording in the Insuring Clause. Indeed, paragraphs 44 - 53 of Aviva's written argument is a powerfully argued section explaining why the relevant limit applies on a per occurrence basis. That section refers to the Insuring Clause for Section 2 as well as Clause 1 of the Extensions and arrives at the same conclusion that I have reached.

248. In dealing with issues 9 and 10, I did not consider that the decisions of Cockerill J in *Corbin & King* and Butcher J in *Stonegate* (or the other cases dealt with at the same time) were of any real assistance. In relation to limits, the language of the policies in issue in those cases was materially different, and indeed bore little or no relation to the structure and terms of the policy that I am considering. The decision in *Stonegate* may, possibly, be of more significance in relation to the number of occurrences, but that is not an issue which I am presently considering.

249. Accordingly, I answer issues 9 and 10 concerning the Gatwick Claimants as follows:

9. Is the Defendant bound to indemnify each Claimant in respect of each of the Claimants' premises up to a maximum amount of £1,000,000 with an Indemnity Period of 6 months in respect of each separate interference with the Claimants' businesses particularised in paragraph 38(1) to 38(5) of the Re-Re-Amended Particulars of Claim?

10. Or, as the Defendant contends, is the express Limit of Indemnity of £1,000,000 applicable to each of the premises?

The Defendant is bound to indemnify each Claimant in respect of each of the Claimants' premises up to a maximum amount of £ 1,000,000 with an Indemnity Period of 6 months on the basis set out in the definition of "Limit of Indemnity"; i.e. £ 1,000,000 for any loss or series of losses arising from any one occurrence. Issues as to the number of relevant occurrences are reserved for later determination.

Gatwick, Fuller, Hollywood Bowl and Starboard

250. **Issue 11:**

Is the reference to "*LIMIT*" in the Schedule to the Contract of Insurance a reference to, or does it mean, the defined term "*LIMIT OF INDEMNITY*"

251. This issue has already been addressed, in relation to Gatwick, in the context of Issues 9 and 10. It was not suggested by any party that, in this respect, there was any material distinction between the Gatwick policy, and the Fuller, Hollywood Bowl and Starboard policies. Although there were some differences in the terms of the various policies, their broad shape and the terms relevant to the "Limit" issue were essentially the same as in the Gatwick policy.

252. In the light of my conclusions on Gatwick, I therefore answer this question: **Yes**.

253. **Issue 12:**

In Fuller, is the Claimant entitled to an indemnity with a Limit of £1,000,000 with an Indemnity Period of 3 months in respect of each prevention or hindrance of access or use in respect of, or interference with the business carried on in each of the Claimant's premises?

254. There were some differences between the Gatwick policy and the Fuller policy. I did not consider that any of them made any material difference to the analysis or conclusion that I have reached in the context of the Gatwick policy. Indeed, such differences as existed tended, if anything, to reinforce the conclusions that I have reached in relation to Gatwick.

255. The principal differences are as follows.

256. The Gatwick policy contained a collection of separate endorsements which included the POAND endorsement. In contrast, the Fuller policy contained, as part of the Schedule to policy, some 9 pages of endorsements with the heading "ENDORSEMENTS APPLICABLE TO THIS POLICY". There then followed 31 endorsements. Clause 16 is the POAND endorsement:

> "16. SECTION 2 – PREVENTION OF ACCESS (NON DAMAGE)
>
> Section 2 is extended to include loss following interference with the Business carried out by the Insured in consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises which shall prevent or hinder use of the Premises or access thereto or, interference with the Business carried out by the Insured.
>
> Provided that the Company shall not be liable under this extension for more than the amount shown against this extension in the Schedule."

257. Clause 17 of the endorsements provided coverage for "Advance Profits". (There is no equivalent provision in the Gatwick policy). The concluding words of this clause provided:

> "The Company's Limit of Indemnity shall not exceed the limit stated in the Schedule"

258. The policy Schedule had a limit of £ 500,000 for Advance Profits, and this was set out in the column headed "Limit GBP". In my view, this is a good illustration of the way in which "Limit of Indemnity", "Limit" and "limit" are used interchangeably, with no relevant distinction between them.

259. This is also the case for the cover for "New Acquisitions" set out in Clause 11 of the endorsements. (Again, there is no equivalent provision in the Gatwick policy.) This provides that:

> "the Company shall not be liable for more than the Limit of Indemnity stated in the Schedule"

260. The policy Schedule for Section 2 provides, in respect of "New Acquisitions (Combined with Section I)", a figure of £ 5,000,000 in the column headed "Limit GBP". The policy Schedule for Section 1 provides, similarly, a figure of £ 5,000,000 per occurrence for "New Acquisitions (Combined with Section 2)". The column heading is "Limit of Indemnity GBP". The expressions "Limit" and "Limit of Indemnity" are again, in my view, being used interchangeably.

261. The same point arises in relation to clause 19, the Infectious Diseases extension. The figure in the policy Schedule, under "Limit GBP" is £ 1,000,000. Clause 19 contains the same relevant words as Clause 17, viz: "The Company's Limit of Indemnity shall not exceed the limit stated in the Schedule".

262. Accordingly, for essentially the same reasons as I have reached in relation to Gatwick, I answer this question as follows:

No: the Claimant is entitled to an indemnity with a Limit of £ 1,000,000 with an Indemnity Period of 3 months in respect of any loss or series of losses arising from any one occurrence.

263. **Issue 13:**

In *Starboard*, does the Limit of £1,000,000 with an Indemnity Period of 3 months apply:

(1) Separately in respect of each individual contract between each Claimant and the Defendant, as the said policy was a composite policy (which is common ground) and, accordingly contained distinct and separate contracts of insurance between the Defendant and each Claimant; and/or

(2) Separately each time the use of each Hotel and/or or access thereto was prevented or hindered in consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises; and/or

(3) Separately in respect of each of the interferences with the Claimants' businesses particularised in paragraph 38(1) and (2) of the Particulars of Claim?

264. This series of questions raises an issue which is distinct from those already considered.

The Starboard policy

265. The Starboard policy insured in one policy document a number of different companies which each owned or managed a different hotel. The hotels were listed in the policy Schedule, under the heading "The Premises". There was then a list of 24 premises, the majority of which were individual hotels. The policy Schedule described the Insured as "Starboard Hotels Ltd & Associated Companies". The Associated Companies, as well as Starboard Hotels Ltd, were listed in the "Named Insured" endorsement. A number of additional companies were identified in the "Additional Named Insured's" endorsement.

266. It was common ground that the Starboard Policy was a composite policy: that is, a policy which insures the interests of a number of different insured persons in one document, and which took effect legally by way of separate contracts of insurance between Liberty Mutual and each of the individual insured companies.

The parties' arguments

267. On behalf of Starboard, Mr Gruder submitted that the policy limits applied separately to each company. He supported that submission by reference to the decisions of Potter J and the Court of Appeal in *New Hampshire Insurance Co Ltd v MGN Ltd* [1996] CLC 1692; [1997] IRLR 24, and Cockerill J in *Corbin & King*. There was, he submitted, no warrant for reading the policy limit as applying to all of the premises, contrary to the expectation in a composite policy. The POAND Limit therefore applied separately to each of the Starboard insureds, and consequently each of the premises, under the separate contracts of insurance comprised in the composite policy. Were the position otherwise, the sensible commercial decision of related companies insuring their respective interests in one policy document would be a trap for the unwary. Mr Gruder submitted that no businessman would think that he was disadvantaging himself by putting hotels or businesses owned by separated companies in one composite policy rather than in separate policies. It made no sense to say that Starboard was in a worse

position than Gatwick because they had adopted the convenient route of having a single document, rather than separate documents for each insured.

268. On behalf of Liberty Mutual, Mr Scorey submitted that there were a number of serious flaws in Cockerill J's reasoning in *Corbin & King*, and that it should not therefore be followed. He submitted that Cockerill J had started in the wrong place, by attaching significance to a legal argument based on the nature of a composite policy, whereas the only relevant question was how the contract was to be construed, applying ordinary principles of construction. Contrary to Cockerill J's conclusion, there was no "expectation" that each policy would have access to separate limits, simply by virtue of the policy being composite. She was also wrong to place reliance on the decision in *New Hampshire*, when that case carried the analysis no further.

269. He submitted that underwriters could not sensibly be expected to rate risks by analysing whether the insurable interest of the co-assureds are, as a matter of law, to be treated as several and distinct, which is the test for whether the policy is joint or composite. Furthermore, if ordinary commercial policyholders were to focus on the limit set out in the policy, they would naturally read that limit as just that: the limit and on an aggregate basis.

270. It followed that the composite nature of the Starboard policy made no difference to the analysis on limits. It is a pure question of contractual construction, and the Starboard claimants do not, on the true construction of the policy, have access to multiple limits.

271. In his oral submissions, Mr Scorey emphasised that a composite policy was a single policy within which there were separate contracts. There is therefore one policy, not multiple free-standing independent policies. It is therefore a question of construing the policy terms in order to see whether the parties had denuded that composite nature of any effect. Here, the composite nature of the policy did not affect the limit, because a limit is still a limit. That limit applied across the board. It was therefore fallacious to proceed on the basis that if one had multiple interests insured, one should assume that the limit was replicated for each interest insured.

Discussion

272. I accept the submissions of Mr Gruder on behalf of Starboard on this issue, as summarised above.

273. In *Corbin & King*, Cockerill J concluded "without difficulty" that the correct answer was that the policy in that case was a composite policy in respect of which each insured could claim up to the relevant policy limit. I do not consider that there is any material distinction, in that context, between the composite policy at issue in *Corbin & King* and the composite policy covering the various Starboard insureds.

274. Cockerill J deals with that issue in paragraphs [125]–[127] and more specifically at paragraphs [221] – [243]. Her reasons for reaching her conclusion were in summary as follows. The policy was a composite policy, covering insureds with separate interests to insure. It was not therefore a policy covering joint interests in the same property. Whilst there was no invariable rule, it was fair to say that the "expectation raised by the authorities is that a composite policy is treated as a series of contracts – and hence will be treated as giving the relevant cover per contract". Each company had a separate

interest represented by the restaurant or restaurant(s)/café(s) which it owned, and the policy therefore fell to be analysed as a composite policy. That was:

> "not an insignificant conclusion because although it is not beyond the bounds of possibility that there could be a composite policy with a single limit which applies to all the premises and all the claims, that would certainly not be the expectation in the context of a composite policy".

275. As far as the construction of the particular policy in *Corbin & King* is concerned, the policy provided cover for interruption and interference with the business "where access to your Premises is restricted". The premises were in different locations and could well be differently affected by a danger triggering cover. The word "premises" pointed to each restaurant/café, and that distinction illuminated how a separation of interests may well operate. That in turn pointed to separate limits, and this harmonised with the fact of different named insureds and the separate interests which underpin a composite policy.

276. In my view, all of these considerations apply equally to the policy which I am considering, and I was unpersuaded by the argument that Cockerill J's reasoning was flawed or should not be followed. Her reasoning and conclusions are in my view amply supported by the decision in *New Hampshire* as well as the major textbooks to which she referred.

277. I appreciate, of course, that I am dealing with policy wording that is different to that considered by Cockerill J. The burden of Mr Scorey's submissions was not that *Corbin & King* is distinguishable on the present issue, but rather that it was wrongly decided and that therefore a different approach should be taken. I disagree.

278. Furthermore, I do not consider that there is any material distinction in the wordings which would lead the court to reach a different conclusion to that reached by Cockerill J. The POAND endorsement in the present case refers to "Business Interruption loss following interference with the Business carried out by the Insured in consequence of action …. following danger or disturbance within 1 mile of the Premises which shall prevent or hinder use of the Premises". Just as in *Corbin & King*, each of the Premises owned by each of the Starboard claimants was in a different location and could well be differently affected by a danger triggering cover. In the context of a composite policy covering the separate interests of each named insured, the limit in the POAND endorsement is sensibly to be construed as applying separately to each named insured. I accept, as did Mr Gruder, that it would be possible for a composite policy to provide for what could be called a "shared" limit. However, I see nothing in the language of the policy, or its context, which points in that direction. On the contrary, I consider that a reasonable policyholder, knowing that each hotel was owned by a separately named insured, would conclude that the £1,000,000 limit applied to each insured in respect of an interference which might affect that insured, and would not understand it as creating a shared limit.

279. Accordingly, and in the light of my earlier conclusions, I answer Issue 13 as follows:

In *Starboard*, does the Limit of £1,000,000 with an Indemnity Period of 3 months apply:

(1) Separately in respect of each individual contract between each Claimant and the Defendant, as the said policy was a composite policy (which is common ground) and, accordingly contained distinct and separate contracts of insurance between the Defendant and each Claimant;

Yes.

and/or

(2) Separately each time the use of each Hotel and/or or access thereto was prevented or hindered in consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises; and/or

(3) Separately in respect of each of the interferences with the Claimants' businesses particularised in paragraph 38(1) and (2) of the Particulars of Claim?

The Limit of £1,000,000 applies in respect of "any loss or series of losses arising from any one occurrence". The question of how many occurrences there were is reserved for later determination.

280. **Issue 14**

This issue is related to issue 13 previously discussed:

Or, as [Liberty Mutual] contends in *Fuller* and *Starboard*, is any indemnity capped at £ 1,000,000 as an aggregate limit or overall cap on coverage for Prevention of access (Non Damage) during the period of insurance?

281. For the reasons already given, the answer to this question is:

No. In *Fuller*, where there is a single Insured, indemnity is capped at £1,000,000 in accordance with the terms of the Limit of Indemnity provision of the policy: i.e. "for any loss or series of losses arising from any one occurrence".

In *Starboard*, indemnity is similarly capped, but in respect of each separate Insured rather than by way of an overall cap on the claims of all Insureds collectively.

282. **Issue 15**

This issue, again related to the issues previously discussed, is as follows:

Or, as [Aviva] contends in *Fuller*:

(1) Is any indemnity capped at £1,000,000 as an aggregate limit or overall cap on coverage for Prevention of access (Non Damage) during the period of insurance? Or alternatively;

(2) Is the Claimant entitled to recover up to £ 1,000,000 in respect of any loss or series of losses arising from any one occurrence?

283. For the reasons already given, the answer to these questions is:

(1) No;

(2) Yes

284. **Issue 15A** concerns the number of occurrences:

In *Fuller*, if the proper construction of the Contract of Insurance is as set out in paragraph 15 (2) above:

(1) How many occurrences occurred during the policy period and what were these?

285. The parties agreed that this issue should not be decided at the present time.

286. **Issue 16** concerns the "Departmental Clause" in the Fuller, Hollywood Bowl and Starboard policies:

In *Fuller, Hollywood* and *Starboard*, on the assumption that the independent trading results of each of the Claimant's premises are ascertainable:

(1) Is each of the Claimant's premises a separate "*department*" for the purpose of the Departmental clause at page 35 of the Policy?

(2) And if the answer to (1) above is yes, what (if any) effect does that have on the limits available to the Claimants?

287. The Departmental Clause provides as follows:

> "In respect of Section 2 if the Business be conducted in departments the independent trading results for which are ascertainable the provisions of clauses (a) and (b) of Item 1. Gross Profit including Increase in Costs of Working – Declaration Linked Basis shall apply separately to each department affected by the Incident except that if the Declared Value by the said Item be less than the aggregate sums produced by applying the Rate of Gross Profit for each department of the business (whether affected by the Incident or not) to its relative annual Turnover (or to proportionately increased multiple thereof where the Maximum Indemnity Period exceeds twelve months) the amount payable shall be proportionately reduced."

The parties' arguments

288. Mr Gruder submits that this clause can be relied upon, if necessary, to reach the conclusion that there are separate claims in respect of each premises. The argument is of no real significance to Starboard, in the light of my conclusion (see Issue 13 above) on the composite policy point. The point is, however, important to Hollywood Bowl and Fullers, where there is only a single insured with a multiplicity of premises.

289. He submitted that where business is conducted in departments, the independent trading results for which are ascertainable, the calculation of the loss of gross revenue and increase in the cost of working is effected on a departmental basis so that there are separate claims for each department. So, if one takes the hypothetical example of a

catering business with a department which has an in-house café and another which deals with outside catering, there would be separate claims for each department so long as the independent trading results of the two departments are ascertainable, even though the different departments operate from the same premises. The same principle applies to a department store. If the independent trading results of, for example, Selfridges' furniture department and book department were ascertainable, there would be separate claims for each of these departments if there were a BI loss and claim under the policy. These independent claims are subject to the sum of the revenue for all departments not exceeding the declared value for gross revenue in the policy Schedule for Section 2 of the policy.

290. If different departments of the same business trading from the same premises have different and separate claims for BI, the position of Fullers and Hollywood Bowl are an *a fortiori* case. Each separate pub or other establishment in the case of Fullers, and each separate bowling alley or Puttstars (indoor miniature golf) in the case of Hollywood Bowl, was a separate department for the purpose of the clause. They were in different venues and premises, in different towns or cities many miles from each other. If related businesses operating from the same premises (in the case of the caterer or Selfridges discussed previously) can be considered separate departments for the purpose of the clause, so too can the different venues operated by Hollywood Bowl and Fullers, always assuming that the independent trading results for these venues are ascertainable (which is not an issue in this hearing).

291. Mr Scorey submitted that the Departmental clause was of no relevance to the claims for three reasons.

292. First, it expressly applies only to insurance on a "Gross Profit" basis. However, the Claimants in Hollywood and Starboard were not insured on this basis. Each was insured on a "Gross Revenue" basis. As such, it is inapplicable and therefore irrelevant. The Departmental Clause may have utility when insuring on a "Gross Profit" basis and one needs to take into account the different bases on which different "departments" calculated "Gross Profit," i.e., reflecting different overheads, different profit margins, etc. That is inapposite in the context of these businesses.

293. Secondly, even in the case of Fuller, which is insured on a "Gross Profit" basis, it is irrelevant for the reasons given by Aviva as summarised below. The reference to "clauses (a) and (b) of Item 1. Gross Profit including Increase in Costs of Working – Declaration Linked Basis" is to the basis of cover calculation and it certainly has nothing to do with the limit under the POAND Clause.

294. Thirdly, it is inapt to describe the businesses of the Claimants in Fuller, Hollywood and Starboard as being "conducted in departments". On the ordinary meaning of the word, each pub in Fuller is not a "department", each bowling alley in Hollywood is not a "department" and each hotel in Starboard is not a "department". They are instead "The Premises" identified in each of the Fuller, Hollywood and Starboard policies.

295. If this is wrong, however, and the Departmental Clause does in principle apply, then its effect (if any) would in any event depend on whether "the Declared Value by the said Item be less than the aggregate sums produced by applying the Rate of Gross Profit for each department of the business (whether affected by the Incident or not) to its relative annual Turnover (or to proportionately increased multiple thereof where the Maximum

Indemnity Period exceeds twelve months)". That is not something the Court can resolve at this stage of the proceedings.

296. On behalf of Aviva in relation to the claim by Fullers, Mr Ryan submitted that there was nothing in the Fullers policy which suggested that each property or pub was a separate department. The Fullers policy Schedule identified only two divisions, referred to as the "Inns Division" and "Stables Bar & Restaurant". In his oral submissions, Mr Ryan said that Fullers carried on one business as one entity and it was the same business being carried on at each of its premises.

297. In any event, even if the departmental clause were applicable, it had no impact on the available limit under the Policy. The departmental clause is simply a clause which allows losses to be calculated at a more granular level than the insured's business as a whole. The clause says nothing about the aggregation of such losses or the limits available in respect of such losses and does not purport to amend the clauses which do deal with such matters. Thus, if the departmental clause did apply to each property, it may result in specific losses being identified in respect of multiple properties from a particular incident or incidents. However, if these losses each arise from any one occurrence, they still fall to be aggregated under the definition of "Limit of Liability". Even if each Fullers property was a separate department, that would not affect the available limits.

Discussion

298. On these issues, I broadly accept the submissions of the insurers. I did not consider that the Departmental Clause advanced the claims of Fullers and Hollywood Bowl, or indeed Starboard, in relation to policy limits.

299. First, the clause could not in my view assist the Starboard claimants and Hollywood Bowl, since they were not insured on a "Gross Profit" basis. The Departmental Clause is concerned with the approach to be taken where there is insurance on a Gross Profit basis, and there is nothing in the language which means that it can be applied to insurance on a "Gross Revenue" basis, which is how both the Starboard claimants and Hollywood Bowl were insured.

300. Secondly, although the answer to this issue is not clearcut, I was ultimately unpersuaded by the argument that each of the trading premises of Fuller, Hollywood Bowl and Starboard could be equated with a "department", so that it could be said that business was being "conducted in departments". The concept of a "department" is more apt to describe different divisions of a business, which may be producing or selling different products or supplying different services. One would not ordinarily call each hotel, or pub, or bowling alley, within a business which ran pubs or hotels or bowling alleys, a "department". In saying this, however, I note the suggestion in *Riley on Business Interruption Insurance* 11th edition, paragraph 3 - 38, that the Departmental Clause is often added where "a business is conducted in departments, sections, branches or divisions". However, the word used in the clause is "departments", and it seems to me that "departments" cannot simply be equated with "branches".

301. Thirdly, I agree with insurers that the Departmental Clause says nothing about how the limits of the policy work. The clause is concerned with the calculation of Gross Profit. Mr Ryan's submission, that the clause is simply a clause which allows losses to be

calculated at a more granular level than the insured's business as a whole, gives proper effect to the language of the clause. It is also consistent with the discussion of the origin of the clause in *Riley* in paragraph 3 - 38:

> "Many businesses have two or more revenue earning departments and because they produce or sell different products or supply different services, their respective rates of gross profit may differ. These rates of gross profit earned by different departments may vary considerably, but in the event of an incident affecting the turnover of one or more of them the business interruption claim will in the normal terms of the specification be based on the rate of gross profit as specified in the policy, i.e. the average rate of the whole business.
>
> Consequently, if the incident were to interfere solely or mainly with a department earning a low ratio of profit the insured would be overindemnified. On the other hand, if it affected a department with a high profit ratio the insured would not receive a full indemnity … Moreover, after the incident has occurred efforts will be made to rehabilitate the business as quickly as possible, and trading may be re-established in some departments – possibly in temporary premises before it is in others, with the result that the shortage in turnover due to the incident will not be uniform throughout the different departments. If space is limited, then it would make sense to restore those departments with the highest profitability. Therefore, wherever there are sections of a business generating different gross margins, it is advisable to meet those circumstances."

302. Accordingly, I agree with the insurers that the clause says nothing about the aggregation of losses or the limits available in respect of losses, and that it does not purport to amend the clauses which do deal with such matters.

303. I therefore answer question 16 as follows:

(1) No.

(2) Not applicable; but even if the answer to (1) were "yes", this would not affect the limits available to the Claimants.

Hollywood Bowl

304. **Issues 17 and 18**

These issues concern the limits under the Hollywood Bowl policies:

17. Is the Claimant entitled to an indemnity with a Limit of £500,000 with an Indemnity Period of 3 months in respect of each individual claim in respect of a particular prevention or hindrance of access or use in respect of, or the interference with the business carried on in, each of the Claimant's premises?

18. Or, as the Defendant contends, is any indemnity capped at £500,000 per "*action by the Police or other Statutory Authority*" which led to a prevention or hindrance

of access to the Claimant's premises, with all losses or series of losses arising from that action being aggregated?

305. In relation to the limits under the Hollywood Bowl policies, there is no reason to reach any different conclusion from that reached in relation to the Fullers policy. This is the same conclusion that I have reached in relation to the Gatwick policies, save that (unlike Gatwick) there is only a single insured in the case of both Fuller and Hollywood Bowl.

306. Accordingly, I answer these questions as follows:

17. No.

18. The indemnity is capped at £ 500,000 for any loss or series of losses arising from any one occurrence.

Liberty Retail

307. **Issue 19** concerns the policy issued to Liberty Retail and its associated companies:

Is the limit for the PoA Extension (i) per Business Unit where applicable, alternatively (where not applicable), per relevant Claimant; and in any event (ii) per materially different action taken by a Statutory Authority or Police?

308. As drafted, this issue contains a number of issues. By the end of the hearing, however, the parties were agreed that the issues were materially the same as (i) the composite policy issue which arose in the Starboard case, and (ii) the aggregation issue which arose in Gatwick and the other cases.

309. Thus, Mr Kramer made clear that he was not contending that the POAND limit of £ 750,000 applied on a "per Business Unit" basis: he said that it applied on a "per relevant Claimant" basis.

310. On behalf of Liberty Mutual, Mr Scorey contended (as he did in Gatwick and other cases) that the relevant limit was an annual aggregate limit which applied in the aggregate for all policyholders under the Liberty Retail policy for the period of the insurance. If this was wrong, then he contended that it was an annual aggregate for each insured. If, however, this analysis was wrong, then he accepted (in paragraph 27 of his written argument) that the limit applied per "action by the Police or other Statutory Authority". However, it was common ground that the question of how many materially different actions there were should not be determined at the present stage.

The factual background and the Liberty Retail policy

311. The composite policy issue arose in the context of a somewhat different factual background to the Starboard case, where (for the most part) each Starboard insured owned and operated a different hotel. It was, however, common ground that – as with Starboard – the Liberty Retail policy was a composite policy.

312. The factual position with Liberty Retail and its associated companies, as set out in the Agreed Facts, is that there were six claimants which conducted business at four insured premises at the relevant time.

313. The First Claimant, Liberty Retail Ltd, is the principal operating company in respect of the flagship retail store on Regent Street. The principal activities of Liberty Retail Ltd, at the material time, were the retailing of luxury fashion, fabrics, homeware, gift and beauty products from the store on Regent Street and online.

314. The Second Claimant, Liberty of London Ltd, is the principal operating company in respect of the Liberty London luxury goods brand. Its principal activities were, at the material time, the creation and development of a luxury goods brand, including the design, manufacture and sale of branded luxury goods via retail and wholesale channels. The products of the brand were sold in the Regent Street store and online.

315. The Third Claimant, Liberty Fabric Ltd, is the principal operating company in respect of the Liberty fabrics business. Its principal activities were, at the material time, the design, manufacture, and sale of Liberty fabrics through wholesale channels.

316. The Fourth Claimant, Christy & Co Ltd, is the principal operating company in respect of the Christys' luxury hat brand. Christys' hats, and other products, which were at the relevant time sold in three separate premises in London and at another premises in Witney, Oxfordshire.

317. The Fifth Claimant, Liberty Theta Ltd, is the borrower in respect of the Liberty Group's sterling-denominated financing. It provides finance and management services to the wider Liberty Group including the First to Fourth Claimants.

318. The Sixth Claimant, Liberty Kappa Ltd, is the borrower in respect of the Liberty Group's yen-denominated financing. It provides finance and management services to the wider Liberty Group including the First to Fourth Claimants.

319. The Liberty Retail Claimants' businesses were conducted, at the relevant time, at four insured premises: (1) 210- 220 Regent Street, London, the flagship store and offices; (2) Unit 7, Witan Park, Witney Oxfordshire, a Christys' store; (3) 12 Prince's Arcade, London, a Christys' store which has since closed; (4) 23 St Christopher's Place, London, also a Christys' store.

320. The Insured in the policy Schedule was: "Liberty Zeta Limited and Subsidiary Companies". An endorsement to the policy was headed "Named Insured". This identified "Liberty Zeta Limited and Subsidiary Companies" and "CW Headdress Ltd, Christy & Co Ltd, Christys of London Ltd". There was no dispute that each of the Liberty Retail Claimants was a named insured under the Liberty Retail policy.

321. The policy Schedule, Section 2, was in a similar format to the schedule to the Gatwick policy. It contained, at the top of the page, 6 lines under the heading "Basis of Cover". Four of these lines were completed with "Declared Values", which were replicated as "Limit of Indemnity", as well as a Maximum Indemnity Period. The total was £ 230,510,536. In his submissions, Mr Kramer explained, by reference to contemporaneous documents, how these figures had been calculated and presented to insurers. As Mr Scorey said, each line related, in an approximate but not entirely precise way, to the interests of four of the companies. Thus line 2 (£ 40.064 million) related to the web sales business of Liberty Retail Ltd (£ 11.2 million), and the business of Liberty Fabric Ltd (£ 28.9 million). Line 3 (£ 3.395 million) related to Christy & Co Ltd. Line 4 (£ 12.893 million) related to Liberty of London Ltd. Line 5 (£ 174.157 million) related

to Liberty Retail Ltd in respect of the flagship department store. The figures in the policy Schedule were altered in endorsement 18 to the policy.

Discussion

322. In his oral submissions, Mr Scorey dealt with the issues of composite policy and aggregation briefly. This is because the arguments were no different to those which he had advanced in the context of Starboard (in relation to the composite policy point) and Gatwick and the other claimants (in relation to the aggregation point). It was not therefore suggested that there was anything in the terms of the Liberty Retail policy, or the factual background, which would give rise to any different result. I have already addressed the arguments in detail above, and I therefore reach the same conclusions in relation to the Liberty Retail policy. Accordingly, I answer issue 19 as follows:

The limit of £ 750,000 in the POA extension is applicable per relevant Claimant. There is a limit of £ 750,000 for any loss or series of losses arising from any one occurrence. This limit is not an annual aggregate limit per Claimant nor for all the Claimants collectively.

323. **Issue 20** is as follows:

Is the AICW sub-limit of indemnity available separately and in addition to the sub-limit that is available for the PoA Extension?

324. The Liberty Retail policy Schedule contained (as described above) 6 line items under the heading "BASIS OF COVER". 4 of these line items were completed with figures, and the description of each figure was "Gross Profit including Increased Costs of Working".

325. In the second half of the page, there was a list of "BUSINESS INTERRUPTION EXTENSIONS". Item 1: "Additional Increase in Cost of Working" (or "AICW"), with a limit of £ 5 million and a 12-month indemnity period. Item 18 was the POAND extension with a limit of £ 750,000 and a 3-month indemnity period. The question raised by issue 20 is whether, when there was a loss covered by the POAND extension, the £ 5 million could be claimed in addition to the £ 750,000.

326. Liberty Retail argued as follows. The lower part of the page setting out the "Business Interruption Extensions" included a number of items which formed part of the standard form provisions of the policy which dealt with "Basis of Cover applicable to Section 2", which began on page 14 of the standard terms. These provisions were Basis 2, headed "Additional Increase in Cost of Working"; Basis 4, headed "Fines and Damages" (with a £ 250,000 limit); and Basis 5, headed "Research Establishment Expenditure" but this was listed as "Not Insured".

327. The wording of the cover for Additional Increase in Cost of Working, on page 14, was as follows:

> "Cover under this Item is limited to such further additional expenditure beyond that recoverable under clause (b) of Item No 1 on Gross Profit as the Insured shall necessarily and reasonably incur during the

> Indemnity Period as a result of the Incident for the purpose of avoiding or diminishing the reduction in Turnover".

328. That Schedule then goes on in the same list to provide cover, each with their own Limit, for the Extensions properly so-called.. rather than Bases of Cover. These included the POAND extension which is the foundation of the claim by the Liberty Retail companies in the present case.

329. Liberty Retail argued that the AICW of its nature is an additional basis of cover with its own limit for "further" increased cost of working going beyond that covered by paragraph 1 of the Basis of Cover provisions on page 14 of the standard wording. Paragraph 1 covers Gross Profit including Increased Cost of Working. The limit for AICW clearly applies in addition to the Basis 1 Gross Profit Limits.

330. Liberty Retail submitted that it was not disputed that the POAND extension would invoke the Gross Profit machinery in the standard wording, as amended by an endorsement headed "GROSS PROFIT INCLUDING INCREASE IN COST OF WORKING". Thus, the POAND extension does not set out its own machinery for calculating 'loss'. In other words, Basis of Cover paragraph 1 (as amended) is clearly applicable to the POAND Extension. Conversely, AICW is a separate Basis (in the same Extensions list as the POAND Extension in the Schedule) and applies on top, with its own Maximum Indemnity Period (shorter than the Basis 1 Gross Profit items but longer than the special period applicable to the POAND Extension) and its own limit on a per occurrence basis.

331. Accordingly, anyone reading the POAND Extension with its statement "Provided that the Company shall not be liable under this extension for more than the amount shown against this extension in the Schedule" would understand this to be reminding the reader that the extension has its own limit in the policy Schedule (which it does). They would not understand this to mean that the separate "Additional" cover of AICW for "further" Increase in Cost of Working (or "ICW") falls or is abolished where the trigger is that in the POAND Extension, or that any claim for AICW must be brought within the POAND Extension limit. On the contrary, the policyholder would understand that a specific limit had been identified for AICW as an extension (without qualification) and that this was the limit to apply to any claim for AICW as extension no matter whether the claim for Gross Profit and/or ICW was brought under the core Insuring Clause (property damage business interruption) or another extension such as the POAND Extension.

332. I do not accept this argument. In my view, as Mr Scorey said in his oral submissions, the reasonable reader of the second paragraph of POAND endorsement would understand that the limit for the POAND cover was the amount shown against the words "Prevention of Access (Non Damage)" in the policy Schedule. That limit is £ 750,000. That is therefore the maximum recovery for a claim under the POAND extension, albeit that (for reasons previously discussed) it operates on the basis set out in the Limit of Indemnity provision, namely for any loss or series of losses arising from any one occurrence. A reasonable reader would not understand that the £ 750,000 could be topped up by an additional £ 5,000,000 in respect of AICW.

333. I therefore answer question 20: **No**.

334. **Issue 21** is:

Can the Claimants claim for Claim Preparation Costs and, if so, what limit applies to that claim?

335. The Claims Preparation Costs Clause in the Liberty Retail policy (the "CPC Clause") is contained in an endorsement, which provides as follows:

> "The insurance by this Policy extends to pay the exceptional costs not otherwise covered herein necessarily and reasonably incurred by the Insured with the Company's prior consent to prepare and verify the amount of claims admitted under this Policy in accordance with the Claims Conditions of this Policy.
>
> These costs shall not include the costs of negotiation of the claim with the Company or its representatives.
>
> The liability of the Company under the terms of this Condition shall not exceed the limit stated in the Schedule."

336. Liberty Retail contends that it is entitled to claim unlimited Claims Preparation Costs in respect of its claim under the POAND endorsement. Whilst there is a limit of £ 50,000 specified in the policy Schedule Section 1 (dealing with Material Damage), there is no equivalent provision in the policy Schedule Section 2 which deals with Business Interruption. Claims Preparation Costs are not listed in that part of the Schedule, and therefore no limit is specified. Liberty Retail submits that there is nothing in the CPC Clause which justifies the conclusion that it is only applicable to claims under Section 1. They point to other endorsements which are more specific in that regard, and submit that the parties knew how to express themselves if they wished an endorsement to be restricted to a particular section of the policy.

337. Liberty Mutual submits that Liberty Retail cannot claim in respect of Claims Preparation Costs for a number of reasons. They contend that such costs are only insured under Part 1 (Material Damage), where a £ 50,000 limit is stipulated. However, no claim is made under Part 1. Instead, Liberty Retail's claim is advanced pursuant to the Business Interruption Section of the Schedule (Section 2). The short answer is that Section 2 does not provide any such cover.

338. Moreover, even if Liberty Retail were entitled to claim such costs in principle, Claims Preparation Costs are not insured in addition to the limits under the POAND Clause. The final sentence of the CPC Clause makes clear that: "The liability of the Company under the terms of this Condition shall not exceed the limit stated in the Schedule."

339. Liberty Mutual also relied upon the provisions of the CPC Clause requiring the claims to have been admitted, and to prior consent being given. However, it was agreed that any issues in relation to those points were not for determination at the present stage.

340. I accept Liberty Retail's submissions on this issue.

341. The opening words of the first paragraph of CPC Clause are that the "insurance by this Policy extends to pay the exceptional costs …". The final words of that paragraph are

"in accordance with the Claims Conditions of this Policy". This paragraph is quite general, and it is not confined to a claim under Section 1 of the policy. I therefore reject the argument that the CPC Clause is only applicable to claims under Section 1.

342. The final sentence provides that the liability of the Company shall not exceed the limit stated in the Schedule. Where a limit has been specified, as is the case under Section 1, that limit obviously applies. However, there is no limit applicable to claims under Section 2, and therefore – in relation to Section 2 – there is nothing on which that final sentence can bite. Liberty Mutual's liability for these costs, in relation to Section 2, is therefore not subject to a limit. However, the CPC Clause does provide a means for Liberty Mutual to exert a measure of control over the extent of its liability, since its prior consent is required.

343. I also reject Liberty Mutual's alternative argument that the limits of the POAND clause mean that no claim under the CPC Clause, over and above the £ 750,000 POAND limit, can be made. The opening words of paragraph 1 ("The insurance by this Policy extends to pay the exceptional costs not otherwise covered herein …") indicate that this is a general extension so as to cover ancillary costs of preparing a claim, and – because it is not confined to Section 1 – that in principle it applies to all sections of the policy. It also expressly applies to costs which are not otherwise covered. In my view a reasonable reader would regard the extension as applying to the ancillary costs of any claim, including under the POAND clause itself.

344. Accordingly, I answer this question:

Yes: the Claimants claim for Claim Preparation Costs. There is no limit applicable to that claim.

Bath Racecourse

345. Issue 21A and 21B concern the Bath Racecourse policy.

346. **Issue 21A** is:

21A: Does the limit for the Denial of Access Cover apply (a) per premises; (b) alternatively, per Claimant; (c) in any event, per materially different action taken by the Government or any other competent authority?

The Bath Racecourse policy

347. The Bath Racecourse policy is on a different policy form, and with very different wording, to the Liberty Mutual policies previously considered. The standard terms are described in the policy as the Bluefin/Liberty/2016 wording, Bluefin being a broker. The insurers represented by Mr Scorey and Mr Walsh comprise Liberty Mutual, Allianz Insurance PLC and Aviva. They have admitted that there is cover in principle, but not the quantum or limits of indemnity claimed, and have paid £ 2.5 million, which they contend to be their liability under the policy.

348. The shape of the policy, and the terms material to the present issue, are as follows. The "Risk Details" (equivalent to the policy Schedule, and which I will refer to as such), which precede the standard wording, run to 26 pages. The Insured is:

> "Arena Racing Company, Arena Racing Corporation Limited & NR Acquisitions Topco Limited, Conzumel Limited &/or subsidiary companies".

349. It was common ground that this was a composite policy.

350. The "Sums Insured" comprised three sections: Section 1, Material Loss or Damage; Section 2, Business Interruption; and Section 3, Personal Accident. Section 2 provided as follows:

"SECTION 2 – BUSINESS INTERRUPTION

Item	Interest	Sums Insured/ Estimates/Limits
A	Estimated Gross Profit (Declaration Linked Basis)	GBP Not Covered
	Maximum Indemnity Period:- months	
	Uninsured Variable Costs as stated herein	
B	Estimated Gross Revenue (Declaration Linked Basis)	GBP 68,656,147
	Maximum indemnity Period: 12 months	
	Estimated Gross Revenue (Declaration Linked Basis)	GBP 16,466,592
	Maximum Indemnity Period: 24 months	
	Estimated Gross Revenue (Declaration Linked Basis)	GBP 25,515,911
	Maximum Indemnity Period: 36 months	
C	Rent Receivable	GBP 5,592,736
	Maximum Indemnity Period: 12 months	
D	Increase in Cost of Working	GBP 5,592,736
	Maximum Indemnity Period: 12 months	
E	Additional Increase in Cost of Working	GBP 100,000
	Maximum Indemnity Period: 12 months	
Note	Item E is only operative when Items A B, C or D are operative.	

351. Page 6 of 26 contained the Excess provision. This provided for various excesses on the basis that:

> "All claims for Damage arising out of one occurrence or series of events arising out of one occurrence shall be adjusted as one claim …"

It identified the amount of the excess to be deducted.

352. The "Conditions" provided:

> "Wording: Bluefin/Liberty Combined Wording 2016 amended as follows.
>
> It is understood and agreed that: --"

There then followed 41 clauses, the majority of which made changes or additions to the standard Bluefin wording.

353. One of these changes gives rise to the principal argument advanced in relation to issue 21A. It concerns the DOA cover. In the standard Bluefin wording, the DOA cover is contained in a section headed "Section 2 - Particular Settlement Terms". Section 2 in the standard wording is the Business Interruption cover. The DOA provision is as follows:

> "**Denial of Access**
>
> This Section extends to include any claim resulting from interruption of or interference with The Business carried on by
>
> The Insured at The Premises in consequence of
>
> (a) Damage to other property within a five mile radius of The Premises which shall present or hinder the use of or access to The Premises whether The Premises or property of the Insured are damaged or not
>
> (b) action by the Police Authority and/or the Government or any local Government body or any other competent authority following danger or disturbance within a one mile radius of The Premises which shall prevent or hinder use of The Premises or access thereto (Emphasis supplied)
>
> (c) action by the Police Authority and/or the Government or any local Government body or any other competent authority following the suspected or actual presence of a harmful device on or in the vicinity of The Premises provided that the Police Authority shall be informed as immediately as the Insured become aware of the presence of such device
>
> (d) pollution of any sea beach waterway or river arising from a sudden identifiable unintended and unexpected incident occurring within a five mile radius of The Premises which takes place in its entirety at a specific time and place during the Period of Insurance which shall directly cause a reduction in Turnover
>
> Provided that
>
> 1. after the application of all other terms conditions and provisions of this Section liability of the Insurer shall not exceed

(i) GBP 1,000,000 in respect of (a) above any one loss

(ii) GBP 1,000,000 in respect of (b) above any one loss (emphasis supplied)

(iii) GBP 100,000 in respect of (c) above any one loss

(iv) GBP 100,000 in respect of (d) above any one loss"

354. I have underlined, above, the relevant parts of the clause which give rise to the present argument.

355. The DOA Clause was amended in the policy Schedule as follows:

> "22. Notwithstanding anything contained herein to the contrary, the limit in respect of Section 2 – Particular Settlement Terms, Denial of Access:-
>
> Proviso (i) is amended in respect of (a) to GBP 1,000,000 and a maximum indemnity period of 3 months
>
> Proviso (ii) and (iii) are amended in respect of (b) and (c) to GBP 2,500,000 and a maximum indemnity period of 3 months."

356. The central question is whether the effect of the amendment was wholly to replace the original wording with its reference to "any one loss". Bath Racecourse contended that the "any one loss" provision remained, but that there was an increase in the limit from £ 1 million to £ 2.5 million, together with the introduction of a maximum indemnity period of 3 months. The insurers contend that the effect of this amendment is that the £ 1 million "any one loss" language in limb (b) of the DOA Clause was replaced with a £ 2.5 million limit full-stop. Accordingly, the insurers contended that there was a £ 2.5 million limit applicable to the policy as a whole, and that this was not on "any one loss" basis. Before returning to the detail of the parties' arguments, I will describe the remainder of the policy and the Bath Racecourse claimants.

357. The parties, in particular Bath Racecourse, referred to a number of other clauses within the 41 to which I have referred. In particular, Bath Racecourse referred to the following:

> "6. In respect of Section 1 - Material Damage, racecourse turfs, golf greens, fairways, course drainage sprinkler systems and tees are restricted to Damage arising from fire, lightning, explosion, aircraft or other aerial devise or articles dripped therefrom, riot, civil commotion, strikers, locker-out workers, persons taking part in labour disturbances, malicious persons other than thieves and accidental damage caused by emergency service vehicles and is limited to GBP 50,000 any one loss. This limitation does not apply to the Tapeta surfacing at Newcastle or Wolverhampton racecourse.
>
> 7. Damage to golf green, fairways, course drainage sprinkler systems and tees includes the cost of repair following accidental damage caused by the misuse of fertilisers or pesticides, limited to GBP 20,000 in the aggregate.

> 8. In respect of Section 1 - Material Damage, Damage to landscaped pathways is restricted to Defined Perils (Liberty Standard Wording) as stated below and subject to a limit of GBP 50,000 each and every claim:-
>
> 9. Section 1 - Material Damage, Definitions, Contents is deemed to include Stock, cups and trophies, running rails, benches, and garden furniture, irrigation equipment, horse watering apparatus, ground keeping equipment, temporary security fencing and generators, electrical and plumbing equipment, trade contents, furniture including TV screens, advertising hoardings and computer equipment. Advertising hoardings are limited to GBP 100,000 any one loss.
>
> 14. This insurance includes the cost of re-erection and fixing of machinery and plant as a result of Loss or Damage subject to a limit of GBP 25,000 any one occurrence or series of events arising out of one occurrence.
>
> 20. It is noted and agreed that Section 1 - Particular Settlement Terms, Metered Water is deleted and replaced with the following
>
> Metered Utility Costs damage & Unauthorised Use
>
> The Insurance by Item B includes loss of metered water, electricity, gas, oil, telecommunication services and or other metered supply services at the Premises for which the Insured is legally responsible to the supplier and for the unauthorised use by third Pprties of such series during the Period of Insurance and for which the Insured is held legally responsible to the supplier for such costs subject to the Insurers liability not exceeding GBP 50,000 any one occurrence or series of events arising out of one occurrence.
>
> 26. Section 2 is extended to include Injury to any Employee as follows:
>
> …
>
> The maximum the Insurers will pay in respect of any one claim is GBP 10,000.
>
> 28. Excesses Section 1 and 2 combined are reduced to GBP 1,000 any one loss in respect of loss or Damage to mobile telephones and portable computer equipment."

358. Page 22 of the Schedule described the business of the insured as "Owners, managers and operators of horseracing courses and dog racing tracks" and various other businesses including provision of facilities for horse trials and other events.

359. The Bluefin wording, under the heading: "Combined Insurance", started as follows:

> "IN CONSIDERATION OF the Insured named in The Schedule having paid or agreed to pay the premium, the Insurer agrees to provide the

> insurance described in this Certificate subject to the Terms and Conditions for the Period of Insurance stated in The Schedule
>
> Unless stated otherwise the Insurer will not pay more than the Sums Insured Compensation or Limits of Indemnity in any one Period of Insurance"

360. The policy then contained various sections. Section 1 was headed "Material Damage". Section 2 was headed "Business Interruption". It contained various definitions, including the following definition of The Premises:

> **"The Premises** - any premises owned occupied or used by the Insured or where goods or records are stored or worked upon or services provided by others on behalf of the Insured anywhere in Great Britain Northern Ireland the Channel Islands or the Isle of Man including whilst in transit in Great Britain Northern Ireland the Channel Islands or the Isle of Man"

361. The DOA Clause was, as previously described, within a section headed "Section 2 – Particular Settlement Terms". Some of these and other terms of the policy are relevant to issue 21B, and I will refer to them in that context.

The various Bath Racecourse companies

362. The 22 Claimants in *Bath Racecourse* are all part of the Arena group, which at the relevant time operated racecourses, greyhound tracks, golf clubs, hotels and a pub at 21 locations. 19 locations were in England, and 2 were in Wales. With one exception, each location is managed by a separate claimant. The 20th claimant, GRA Ltd, managed two greyhound tracks, one in Manchester and the other in Birmingham. Two further claimants (Claimant 21 – Arena Leisure Racing Ltd, and Claimant 22 – the Racing Partnership Ltd) operated across the locations, providing management, premises services, and exploiting media rights. Most locations comprised a single venue, but five had multiple premises adjacent to each other. Thus, Newcastle (Claimant 8) comprised a racecourse, a pub and a golf course. Doncaster (Claimant 11) had a hotel as well as a racecourse. Lingfield Park (Claimant 12) had a racecourse, golf club and hotel. Southwell (Claimant 13) had a racecourse and a golf club. Wolverhampton (Claimant 15) had a racecourse and a hotel.

The parties' arguments on issue 21A

363. The Bath Racecourse claimants contended that the original DOA cover was on the basis of "any one loss", and that the effect of the amendment was to raise the limit to £ 2.5 million and to add a bespoke Maximum Indemnity Period. They submitted that the insurers' contrary argument had a number of insurmountable problems.

    (1) The amendment does not provide a full replacement text that replaces the former proviso (as endorsements often do), nor does it state that any words in the former proviso are 'hereby deleted', but merely states that the proviso is amended. The reasonable reader would understand the same basis (any one loss) to be intended, but with the figure of £ 1m replaced with that of £ 2.5m, and adding a Maximum Indemnity Period.

(2) Where the parties intended to move to a limit in the aggregate in these 41 conditions they expressly said so: see condition 7 for certain material damage for golf greens ("…subject to a limit of GBP 20,000 in the aggregate"). Equally, where the parties intended to adjust the basis for applying a limit in some other way, they again expressly said so: see e.g. certain material damage for racecourses and other premises under condition 6 ("any one loss"), condition 8 landscaped pathways ("each and every claim"), certain stock ("any one loss"), condition 14 machinery ("any one occurrence or series of events arising out of one occurrence"), and condition 26 business interruption related to injury of employees ("any one claim").

(3) To the extent that there is genuine ambiguity on the point, this would be a case where it would be appropriate to construe the Policy *contra proferentem* insurers. But in fact there is no such ambiguity, for the reasons already given.

(4) In any event, the default aggregation position for limits if for some reason the 'any one loss' wording has been impliedly struck through is that they apply per occurrence, not aggregated across all occurrences. That is because the wording in relation to Excesses is that "All claims for Damage arising out of one occurrence … shall be adjusted as one claim and from such adjusted claim the sum specified below shall be deducted" (this providing a £ 5k Excess/deductible for BI under Section 2, being "*any other Damage"*).

364. The Bath Racecourse claimants also contended that "any one loss" aggregation meant, at least, that there were separate limits per government action, although ultimately they were content for any issues as to the number of losses to be determined at a later stage.

365. It was common ground that the Bath Racecourse policy was a composite contract of insurance. Accordingly, the Bath Racecourse claimants adopted submissions in other cases that the applicable limit of £ 2.5 million applied, at least, on a per claimant basis. They also submitted, however, that a particular claimant might have more than one loss within the "any one loss" language. Accordingly, where a particular claimant had more than one affected premises, there could be more than one loss recoverable. Again, however, that point was to be determined at a later stage.

366. On behalf of the insurers, Mr Scorey submitted that the "any one loss" language in limb (b) of the DOA clause had been replaced in its entirety. Although Bath Racecourse contended that the words "any one loss" were not deleted by reason of Condition 22 in the Schedule, that must be the effect. There is no reference to "any one loss" in Condition 22. The amendment of proviso (i) makes little sense if the words "any one loss" were intended to be retained. This is because the limit in the DOA Clause was already £ 1,000,000. Condition 22 applies "Notwithstanding anything contained herein to the contrary".

367. The insurers also submitted that although the Bath Racecourse policy is composite, this does not, in and of itself, entitle Bath Racecourse to one or multiple limits per policyholder. This is for the reasons previously argued in the context of the Starboard composite policy issue. Nor is this result reached because there were multiple insured premises. There is nothing in the Bath Racecourse policy which suggests this. Nor is there anything to suggest that the limit is available per action of the Government. On the contrary, the Bluefin wording makes abundantly clear that "Unless stated otherwise

the Insurer will not pay more than the Sum Insured Compensation or Limits of Indemnity in any one Period of Insurance". In other words, the default position is that the limit is the limit for the policy period and not each and every loss or occurrence. In the circumstances, the limit under the DOA Clause is £2,500,000 in total/the aggregate for all of the policyholders under the Bath Racecourse policy for the period of the insurance.

Discussion

368. I accept the Bath Racecourse claimants' argument that there was no change to the "any one loss" language contained in proviso (ii) of the original DOA clause, and that the effect of the change was to increase the limit to £ 2.5 million and to add a maximum indemnity period. I do not consider that there is any language in condition 22 which clearly alters the parties' existing agreement as to "any one loss". If the "any one loss" provision were to disappear, one would expect to see language such as that contained in condition 20, which refers to a provision being "deleted and replaced". In my view, the more natural reading of clause 22, which refers to proviso (ii) being "amended", is that the relevant amendments are then spelt out: i.e. the increase of the limit, and the addition of the maximum indemnity period. Apart from those amendments, the provision remains as agreed.

369. I also agree with Mr Kramer's submission that if the parties had been intending to delete the "any one loss" basis for the original £ 1 million limit, one would expect that the parties would then identify the new basis on which the £ 2.5 million limit was to operate. In that regard, Mr Kramer made some effective points on, for example, clause 6, 7 and 8, where there were changes to the basis of aggregation in respect of certain aspects of material damage. In the standard Bluefin wording for Material Damage, the "Settlement Terms" provided for aggregation on the basis of "any one incident or series of incidents arising from one cause". Clauses 6 – 8 provide for different approaches. There was also force in Mr Kramer's point, based on clause 7, that if the parties had been intending to introduce an aggregate limit instead of "any one loss", then they would have spelt that out.

370. I considered that these points were more powerful and persuasive than Mr Scorey's contrary arguments. I do not consider that the opening words of clause 22 ("Notwithstanding anything contained herein to the contrary") are equivalent to language which deletes and replaces all of the text of proviso (ii). Those words have to be read in the light of the fact that the clause is only making an amendment to that proviso (as well as (i) and (ii). Accordingly, the opening words make it clear that the amended proviso applies even if there are other provisions to the contrary.

371. Mr Scorey submitted that the amendment of proviso (i) made little sense if the words "any one loss" were intended to be retained; because the limit in the DOA clause was already £ 1 million. Whilst I agree that that clause could have been drafted more economically, by simply referring to the amendment to add the maximum indemnity period, I do not consider that the draftsman's decision to repeat that the limit is £ 1 million has the significance which Mr Scorey ascribes to it. Arguments based on surplusage are generally weak in the context of commercial contracts such as the present. If the intention had been to delete "any one loss" in proviso (i), one would expect that to be done expressly and clearly. Where, as there, a maximum indemnity

period was being added, it is not surprising that the draftsperson decided to make it clear that the overall limit remained as it was.

372. The insurers also referred to the opening words of the Bluefin wording: that unless otherwise stated, the insurer would not pay more than the sums insured or limits of indemnity "in any one Period of Insurance". This takes the insurers' argument no further. Since the DOA limit is expressly an "any one loss" limit, this prevails by reason of the opening words ("Unless otherwise stated"). As Mr Kramer said in his oral submissions: they just mean that you are limited by the limits that are there.

373. Accordingly, I conclude that the relevant policy limit under limb (b) of the DOA clause is £ 2.5 million "any one loss". As previously indicated, I do not decide at the present stage how many losses there were.

374. The parties' submissions also covered, albeit relatively briefly in oral argument, the "composite" policy issue which arose in both Starboard and Liberty Retail. For the reasons which I have previously given on that topic, I resolve the "composite policy" issue, and its effect on policy limits, in favour of Bath Racecourse. Accordingly, each claimant is entitled to claim up to the limit of £ 2.5 million for "any one loss".

375. I therefore answer issue 21A as follows:

There is a limit of £ 2.5 million under the Denial of Access cover. Each Claimant is entitled to claim up to the limit of £ 2.5 million for any one loss. All issues as to the number of losses are reserved for later determination.

376. **Issue 21B** is:

Are the limits for the cover for Additional Increased Costs of Working and Claims Preparation Cover available on the same basis as per Issue 21A above?

377. The Bluefin wording states, in relevant part, as follows:

> "**E. Additional Increase in Cost of Working**
>
> The insurer will pay as indemnity
>
> the additional expenditure beyond that recoverable under other Items necessarily incurred in consequence of the Damage for the purpose of maintaining The Business during the Indemnity Period provided that the Insurer's liability in respect of loss shall not exceed the amount stated in The Specification.
>
> **Claims Preparation Clause**
>
> Notwithstanding anything contained herein to the contrary this Certificate is extended to pay the exceptional costs not otherwise covered herein necessarily and reasonably incurred by the Insured with the Insurer's prior consent to prepare and verify the amount of claims admitted under this Certificate in accordance with the claims conditions of this Certificate where such claims are in excess of GBP 50,000 above the applicable deductible.

> These costs shall not include the cost of negotiation of the claim with the Insurer or its representatives.
>
> The liability of the Insurer under the terms of this Condition shall not exceed GBP 50,000 in respect of any one claim or series of claims arising from a single occurrence."

378. The Schedule to the Bath Racecourse policy stipulates that the limit for AICW is £ 100,000, and subject to a maximum 12-month indemnity period.

379. The issues between the parties on the Claims Preparation Clause were limited. The insurers agreed that the CPC was insured separately: in other words that this provided cover additional to that set out in the DOA clause as amended. The limit is £ 50,000 in respect of any one claim or series of claims arising from a single occurrence. The only question is whether this applies in the aggregate across all Bath Racecourse claimants or is a limit available to each claimant. This issue depends upon the "composite" policy argument which, in other contexts, I have resolved in favour of the Claimants.

380. The principal issue concerning AICW is similar to that which arose in Liberty Retail; i.e. whether the £ 100,000 limit is additional to the £ 2.5 million limit for the relevant DOA cover. I answer that question, as I did in Liberty Retail, in favour of the insurers. Clause 22 provides for a limit of £ 2.5 million "[n]otwithstanding anything contained herein to the contrary". In the light of those words, I agree with Mr Scorey that the Bath Racecourse claimants cannot contend that there are other provisions of the policy, such as the AICW provision, which have the effect of increasing the limit above £ 2.5 million and a maximum of 3 months.

381. I therefore answer issue 21B as follows:

The Claims Preparation Clause provides cover additional to the DOA limit of £ 2.5 million. The cover is limited to £ 50,000 in respect of any one claim or series of claims arising from a single occurrence. The limit is not an aggregate limit applicable to the insureds collectively. Each claimant is entitled to claim up to the limit.

The AICW clause does not provide cover additional to the DOA limit of £ 2.5 million and a maximum indemnity period of 3 months.

F: LMIE wordings: Furlough payments

382. Issues 22 and 23 raise the same issue, in the context of various policies, of whether various claimants need to give credit for payments under the Coronavirus Job Retention Scheme or CJRS, colloquially known as "furlough" payments.

383. **Issue 22** – ***Gatwick, Starboard and Hollywood Bowl***

Are the Claimants obliged to account to the Defendant for any grants received as a result of the Coronavirus Job Retention Scheme?

384. **Issue 23** – ***Liberty Retail and Bath Racecourse***

Should credit be given by the Claimants for any payments received as a result of the Coronavirus Jobs Retention Scheme?

385. Each of the policies contains a "savings" clause. The Bath Racecourse savings clause is set out in Section B6 above. In the Liberty Retail policy, the savings clause, underlined below, appears in the following context:

> "**GROSS PROFIT INCLUDING INCREASE IN COST OF WORKING**
>
> Under Business Interruption the insurance under this Item is limited to loss of Gross Profit due to a) Reduction In Turnover and b) Increase In Cost of Working and the amount payable as indemnity thereunder shall be:
>
> a) In respect of Reduction In Turnover the sum produced by applying the Rate of Gross Profit to the amount by which the turnover during the Indemnity Period shall in consequence of the Incident fall short of the standard turnover;
>
> b) In respect of Increase In Cost Of Working the additional expenditure (subject to the provisions of the uninsured standing charges clause) necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in turnover which but for that expenditure would have taken place during the Indemnity Period in consequence of the Incident but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;
>
> less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the business payable out of Gross Profit as may cease or be reduced in consequence of the Incident;"

386. Although the language of all the other policies were not identical, it was not suggested by any party that there was any difference in wordings which was material to their arguments. Accordingly, issues 22 and 23 can conveniently be addressed by reference to the language of the Liberty Retail policy.

The factual background

387. The following factual and legislative background to the CJRS is taken from the Statement of Agreed and Assumed Facts in the Liberty Retail case. That document was more comprehensive, in relation to the CJRS, than the agreed facts in most of the other cases, although nothing turns on any differences in relation to the facts which were agreed.

388. The CJRS was first announced, by the then Chancellor of the Exchequer Rishi Sunak, on Friday 20 March 2020. This was in the run-up to and start of the first lockdown, which occurred in the following circumstances.

389. On Monday 16 March 2020, the Prime Minister (Boris Johnson) had made a statement to the British public in which he said:

> "I wanted to bring everyone up to date with the national fight back against the new coronavirus and the decisions that we've just taken in COBR for the whole of the UK. …
>
> Today, we need to go further, because according to SAGE it looks as though we're now approaching the fast growth part of the upward curve. And without drastic action, cases could double every 5 or 6 days.
>
> So, first, we need to ask you to ensure that if you or anyone in your household has one of those two symptoms, then you should stay at home for fourteen days. That means that if possible you should not go out even to buy food or essentials, other than for exercise, and in that case at a safe distance from others. If necessary, you should ask for help from others for your daily necessities. And if that is not possible, then you should do what you can to limit your social contact when you leave the house to get supplies. And even if you don't have symptoms and if no one in your household has symptoms, there is more that we need you to do now.
>
> So, second, now is the time for everyone to stop non-essential contact with others and to stop all unnecessary travel. We need people to start working from home where they
>
> possibly can. And you should avoid pubs, clubs, theatres and other such social venues. It goes without saying, we should all only use the NHS when we really need to. And please go online rather than ringing NHS 111. Now, this advice about avoiding all unnecessary social contact, is particularly important for people over 70, for pregnant women and for those with some health conditions."

390. On Friday 20 March, at a press conference also attended by the Chancellor of the Exchequer, amongst others, the Prime Minister gave a further statement on Covid-19 announcing the closure of certain businesses:

> "…We are collectively telling, telling cafes, pubs, bars, restaurants to close tonight as soon as they reasonably can, and not to open tomorrow.
>
> Though to be clear, they can continue to provide take-out services.
>
> We're also telling nightclubs, theatres, cinemas, gyms and leisure centres to close on the same timescale.

> Now, these are places where people come together, and indeed the whole purpose of these businesses is to bring people together. But the sad things is that today for now, at least physically, we need to keep people apart.
>
> And I want to stress that we will review the situation each month, to see if we can relax any of these measures.
>
> And listening to what I have just said, some people may of course be tempted to go out tonight. But please don't."

391. On 21 March 2020, the 21 March Regulations were made by the Secretary of State for Health and Social Care pursuant to powers under the 1984 Act."). The Regulations provided for the closure of certain businesses following the announcement of the Prime Minister the previous day.

392. On 23 March 2020, the Prime Minister announced the first UK-wide lockdown.

393. Also on 23 March 2020, the UK Government issued guidance to businesses about closures. The guidance provided for the closure of all retail businesses with limited exceptions that did not include any of the Claimants or their respective businesses. The advice included that it would be an offence to operate in contravention of the regulations in force and that businesses in breach of the regulations would be subject to prohibition notices and potentially unlimited fines. Further, the guidance for people to stay 2 metres apart was reiterated by PHE and the UK Government also issued Covid-19 essential travel guidance stating that individuals should stay at their primary residence as much as possible and not travel unless it was essential.

394. On 25 March 2020, the Coronavirus Act 2020 received Royal Assent. In broad terms, the Act provided for emergency arrangements in relation to health workers, food supply, inquests and other matters.

395. On 26 March 2020, the 26 March Regulations") were made by the Secretary of State for Health and Social Care pursuant to powers under the 1984 Act. The 26 March Regulations revoked most of the 21 March Regulations and introduced a more expansive regime for business closures. The 21 March Regulations remained in force to the limited extent that they provided for offences committed between 21 March 2020 and 25 March 2020.

396. Regulation 5 of the 26 March Regulations provided that:

> "(1) A person responsible for carrying on a business, not listed in Part 3 of Schedule 2, of offering goods for sale or for hire in a shop, or providing library services must, during the emergency period –
>
> (a) cease to carry on that business or provide that service except by making deliveries or otherwise providing services in response to orders received –
>
> i. through a website, or otherwise by on-line communication,

> ii. by telephone, including orders by text message, or
>
> iii. by post;
>
> (b) close any premises which are not required to carry out its business or provide its service as permitted by sub-paragraph (a);
>
> (c) cease to admit any person to its premises who is not required to carry on its business or provide its service as permitted by sub-paragraph (a)…".

397. During this period, and into April 2020 and beyond, there were a number of announcements about and provisions enacting CJRS measures.

398. The first announcement of the CJRS was in a speech from the Chancellor on 20 March 2020. In his speech, Mr Sunak said this:

> "This week, the Government has taken unprecedented steps to fight the coronavirus. We have closed schools. We have told people to stay at home to prevent the spread of infection. We are now closing restaurants and bars. Those steps are necessary to save lives. But we don't do this lightly – we know those measures will have a significant economic impact. I have a responsibility to make sure we protect, as far as possible, people's jobs and incomes. Today I can announce that, for the first time in our history, the government is going to step in and help to pay people's wages."

399. On 23 March 2020, the Coronavirus Bill was debated in Parliament. The same day the UK government published a news story on the CJRS.

400. On 24 March 2020, Parliament debated Government support for business and the Contingencies Fund Bill.

401. On 26 March 2020, the Chancellor gave a further speech in which he discussed the CJRS. The same day the UK government published guidance on the CJRS and how to make an application. This document was thereafter updated from time to time**.**

402. On 15 April 2020, the CJRS was enacted by a Treasury Direction of that date.

403. The CJRS was implemented by a series of Treasury Directions made under sections 71 and 76 of the Coronavirus Act 2020. The Chancellor of the Exchequer signed these Directions on 15 April 2020, 20 May 2020, 25 June 2020, 1 October 2020, 12 November 2020, 25 January 2021, and 15 April 2021, and the Directions are recorded by the www.gov.uk website as having been made on 15 April 2020, 22 May 2020, 25 June 2020, 2 October 2020, 13 November 2020, 25 January 2021, and 15 April 2021 respectively.

404. In overview, under the CJRS, until 30 September 2021 (when the scheme ended) UK employers could make a claim to obtain payment / reimbursement from HMRC of up to 80% of expenditure incurred on costs of employment of qualifying "employees" who were not working but kept on payroll (i.e. "furloughed") for more than 21 days (before

30 June 2020) by reason of circumstances arising as a result of coronavirus or coronavirus disease ("furloughed employees"), up to a maximum of £2,500 a calendar month per employee. Reimbursement of employer expenditure (including expenditure on employer national insurance contributions and pension contributions) was to be made by HMRC if the conditions of the scheme were satisfied.

405. The basic approach of the CJRS was, therefore, to reimburse employers for the continued payment of furloughed workers. Thus, employees were "furloughed" for the purposes of the CJRS if they were put on a period of leave during which they were instructed to cease all work for the employer in accordance with the CJRS, and employers recovered reimbursement of pay from HMRC in respect of furloughed employees.

406. The purpose, structure and terms of the CJRS were set out in the Treasury Direction dated 15 April 2020 as follows:

> "**Introduction**
>
> 1 This Schedule sets out a scheme to be known as the Coronavirus Job Retention Scheme ("CJRS").
>
> **Purpose of scheme**
>
> 2.1 The purpose of CJRS is to provide for payments to be made to employers on a claim made in respect of them incurring costs of employment in respect of furloughed employees arising from the health, social and economic emergency in the United Kingdom resulting from coronavirus and coronavirus disease.
>
> 2.2 Integral to the purpose of CJRS is that the amounts paid to an employer pursuant to a claim under CJRS are only made by way of reimbursement of the expenditure described in paragraph 8.1 incurred or to be incurred by the employer in respect of the employee to which the claim relates.
>
> 2.3 The claim must be made in such form and manner and contain such information as HMRC may require at any time (whether before or after payment of the claim) to establish entitlement to payment under CJRS.
>
> 2.4 Before making payment of a CJRS claim, HMRC must, by publicly available guidance, other publication generally available to the public, or such other means considered appropriate by HMRC, inform a person making a CJRS claim that, by making the claim, the person making the claim accepts that:
>
> a) a payment made pursuant to such claim is made only for the purpose of CJRS (and in particular as provided by paragraph 2.2), and

b) the payment must be returned to HMRC immediately upon the person making the CJRS claim becoming unwilling or unable use the payment for the purpose of CJRS.

2.5 No CJRS claim may be made in respect of an employee if it is abusive or is otherwise contrary to the exceptional purpose of CJRS.

Qualifying employers

3.1 An employer may make a claim for a payment under CJRS if the following condition is met.

3.2 The employer must have a pay as you earn ("PAYE") scheme registered on HMRC's real time information system for PAYE on 19 March 2020 ("a qualifying PAYE scheme").

…

Qualifying costs

5 The costs of employment in respect of which an employer may make a claim for payment under CJRS are costs which:

a) relate to an employee

(i) to whom the employer made a payment of earnings in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations that is made on or before a day that is a relevant CJRS day,

(ii) in relation to whom the employer has not reported a date of cessation of employment on or before that date, and

(iii) who is a furloughed employee (see paragraph 6), and

b) meet the relevant conditions in paragraphs 7.1 to 7.15 in relation to the furloughed employee.

Furloughed employees

6.1 An employee is a furloughed employee if:

a) the employee has been instructed by the employer to cease all work in relation to their employment,

b) the period for which the employee has ceased (or will have ceased) all work for the employer is 21 calendar days or more, and the instruction is given by reason of circumstances arising as a result of coronavirus or coronavirus disease.

…

6.7 An employee has been instructed by the employer to cease all work in relation to their employment only if the employer and employee have agreed in writing (which may be in an electronic form such as an email) that the employee will cease all work in relation to their employment.

6.8 Training activities directly relevant to an employee's employment agreed between the employer and the employee before being undertaken must be disregarded for the purposes of paragraph 6.1(a).

Qualifying costs – further conditions

7.1 Costs of employment meet the conditions in this paragraph if:

a) they relate to the payment of earnings to an employee during a period in which the employee is furloughed, and

b) the employee is being paid

(i) £2500 or more per month (or, if the employee is paid daily or on some other periodic basis, the appropriate pro-rata), or

(ii) where the employee is being paid less than the amounts set out in paragraph 7.1(b)(i), the employee is being paid an amount equal to at least 80% of the employee's reference salary.

…

Expenditure to be reimbursed

8.1 Subject as follows, on a claim by an employer for a payment under CJRS, the payment may reimburse:

a) the gross amount of earnings paid or reasonably expected to be paid by the employer to an employee

b) any employer national insurance contributions liable to be paid by the employer arising from the payment of the gross amount

c) the amount allowable as a CJRS claimable pension contribution.

8.2 The amount to be paid to reimburse the gross amount of earnings must (subject to paragraph 8.6) not exceed the lower of:

a) £2,500 per month, and

b) the amount equal to 80% of the employee's reference salary (see paragraphs 7.1 to 7.15).

> 8.3 The amount to be paid to reimburse any employer national insurance contributions must not exceed the amount of employer's contributions that would have been assessed on the amount of gross earnings being reimbursed under CJRS.
>
> 8.4 The total amount to be paid to reimburse any employer national insurance contributions must not exceed the total amount of employer's contributions actually paid by the employer for the period of the claim.
>
> 8.5 For the purposes of CJRS, "employer national insurance contributions" are the secondary Class 1 contributions an employer is liable to pay as a secondary contributor in respect of an employee by virtue of sections 6 and 7 of the Social Security Contributions and Benefits Act 1992 ("SSCBA") or sections 6 and 7 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ("SSCB(NI)A").
>
> 8.6 No claim under CJRS may include amounts of specified benefits payable or liable to be payable in respect of an employee (whether or not a claim to the relevant specified benefit is actually made) during the employee's period of furlough and the gross amount of earnings falling for reimbursement as described in paragraph 8.2 must be correspondingly reduced.
>
> …
>
> **Duration of CJRS**
>
> 12 CJRS has effect only in relation to amounts of earnings paid or payable by employers to furloughed employees in respect of the period beginning on 1 March 2020 and ending on 31 May 2020 and employer national insurance contributions and directed pension payments paid or payable in relation to such earnings."

407. The subsequent Treasury Directions followed a broadly similar structure with variations introduced over time in relation to matters such as the period of operation of the CJRS.

408. Furlough payments were not in the normal course repayable (save where they should not have been paid in the first place, such as cases of overpayment).

The Stonegate decision of Butcher J

409. The identical issue of whether payments under the CJRS are to be taken into account was considered by Butcher J in *Stonegate* at paragraphs [250] – [289]. He concluded that CJRS payments were to be taken into account under a "savings" clause which provided for the deduction of:

> "Any costs normally payable out of **Turnover** (except depreciation) as may cease or be reduced during the **Indemnity Period** as a consequence of the **Covered Event**".

The terms of this clause are very similar to, and in my view are indistinguishable from, the clauses which I am considering.

410. It was common ground in *Stonegate* that the relevant employment (i.e. wage) costs were normally payable out of "Turnover". Similarly, in the context of the Liberty Retail wording, it is common ground that such employment costs are payable out of Gross Profit.

411. The central issue which Butcher J considered was whether CJRS grants had caused the relevant employment costs to "cease or be reduced": see [257]. There was no dispute that if the relevant costs had "ceased" or been "reduced", that was a consequence of a "Covered Event" under the policy that he was considering. Stonegate, the policyholder, contended that there had been no reduction in employment costs; Stonegate had continued to pay wages, and had to do so in order to benefit from the CJRS.

412. Butcher J rejected this argument, expressing his conclusion at [258] as follows:

> "In my judgment, employment costs were at least 'reduced' *pro tanto* by reason of the payment of corresponding amounts under the CJRS. I consider that the natural meaning of the definition, including its savings clause, is that it is referring to costs to the business. Insofar as such costs were defrayed by the government, I consider that they were 'reduced'. That, in my view, reflects the net financial effect of payments under the CJRS and the commercial reality."

413. In paragraphs [259] – [270], Butcher J identified three further considerations which supported the conclusion expressed in [258]. These were in summary as follows. First, the applicable accounting standards would permit (although they would not require) payments of CJRS to be presented as an offset against employment expenses. Secondly, the CJRS scheme envisaged that the government might make payments of the grants prior to employees being paid. Butcher J considered that the question of whether CJRS payments fall to be taken into account under the savings clause could not depend on whether payments were received before or after the payment to the employee. Thirdly, Butcher J considered that the relevant provision should be construed, if there was any room for argument, to accord with the basic principle that the policy was a contract of indemnity. In that connection, he referred (at [268]) to the judgment of Flaux J (as he then was) in *Synergy Health v CGU Insurance* [2010] EWHC 2583 (Comm). Butcher J's conclusion was, therefore, that "CJRS payments did reduce costs payable out of Turnover and are to be taken into account under the savings clause".

414. At paragraphs [271] – [287], the judge considered whether the insurers would, as a matter of the general law, have been subrogated to payments of CJRS. This part of his judgment was *obiter*, since he had already decided that the savings clause did apply: see [271]. He considered that the general law could not be relied upon to produce a different result from that specifically provided for. The discussion in [272] and following was therefore only relevant if, as the judge said, "I am wrong about that, and

that the general law is potentially applicable". He held, after a full discussion of the authorities, that the general law would produce the same result as the savings clause.

415. Butcher J granted permission to appeal against this aspect of his judgment. At the time of the hearing before me, that appeal was scheduled to start a few weeks later. In the event, following the conclusion of the hearing before me, Stonegate's appeal was compromised, and therefore there will be no consideration by the Court of Appeal of the judgment of Butcher J.

The parties' arguments

416. On behalf of the Claimants in *Gatwick, Starboard* and *Hollywood Bowl,* Mr Gruder did not seek to criticise the judgment of Butcher J in respect of the issues which he had addressed. Mr Gruder's central argument was that Butcher J had not had to address an important causation question: i.e. whether the reduction in costs was a consequence of the insured peril. That was because the question of causation had been conceded by Stonegate before Butcher J: see paragraphs [256] and [289]. Mr Gruder suggested in his oral argument that the concession was probably wrongly made, and I was told that one issue for the Court of Appeal, on the then-pending *Stonegate* appeal, would be whether the concession should be withdrawn. However, the important point from Mr Gruder's perspective was that (rightly or wrongly) the concession had been made, and the causation point had therefore not been decided by Butcher J.

417. In relation to the substance of the causation argument, Mr Gruder referred to the Treasury Direction dated 15 April 2020 (whose terms are set out above) and submitted that the requirements for CJRS were purely financial. Any employer who met the financial conditions could qualify for the payments from the scheme. It was irrelevant whether the business had been ordered to close or whether there was Covid-19 at, or any particular distance from, the premises. Businesses which remained open could avail themselves of the CJRS in the same way as a restaurant which had been ordered to close. The only qualifying condition (see paragraphs 3.1 and 3.2 of the Treasury Direction) was that an employer must have a PAYE scheme registered as at 19 March 2020.

418. Mr Gruder submitted that the relevant question was whether the CJRS payments were made as a result of the insured peril: i.e. the action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises which prevented or hindered use of the Premises or access thereto. The answer to that question was obviously: "no". CJRS was payable to all businesses even if the relevant regulations did not cause them to close or interfere with their trade. Payments were not made because the government prevented or hindered access or use of the premises, nor because of a danger (i.e. Covid-19) within 1 mile of the premises in the period leading up to the regulations which imposed restrictions. Mr Gruder emphasised in his submissions the fact that the relevant insured peril in the present case was not simply the disease, but the restrictions imposed in consequence of the disease.

419. In support of his argument, Mr Gruder placed reliance on the decision of the Full Federal Court of Australia in *LCA Marrickville Pty Ltd v Swiss Re International SE* [2022] FCAFC 17, paragraphs [442] – [463]. In that case, the court (reversing the trial

judge) held that the policyholder did not have to give credit for certain "JobKeeper" payments. The court rejected the insurer's argument, stating at [461]:

> "…The question, then, is as follows: assuming that Meridian is able to establish on evidence that the insured peril in cl 8(c) is a proximate cause of its loss (as to which, see PJ [481], [485] – [498]), were the JobKeeper payments made and received "in consequence of" the interruption or interference (that is, the interruption or interference resulting from the insured peril in cl 8(c))? As a matter of the application of the policy's provisions, they were not. The criteria for eligibility for JobKeeper payments were financial ones; they did not depend on whether or not there had been an outbreak within 20 km of the premises of the business. Meridian was entitled to the JobKeeper payments regardless of whether or not there was an outbreak within 20 km of its premises. Conversely, had Meridian not met the financial tests for JobKeeper, it would not have been entitled to JobKeeper payments, even if the insured peril in cl 8(c) occurred. …"

420. The court thus held (see [462]) that it was necessary for the purposes of the causal requirement in the savings provision "to focus on the criteria for the JobKeeper payments, rather than the general underlying policy of the JobKeeper scheme". Mr Gruder submitted that the same approach should be taken here. Focusing on the criteria for payment, the only requirement was a qualifying PAYE scheme. Proof of action by the Police or other Statutory Authority following a relevant danger was not required.

421. Mr Gruder also referred to the decision of the High Court in Dublin in *Hyper Trust Ltd v FBD Insurance plc* [2023] IEHC 455. In that case, Mr Justice Denis McDonald had been able to distinguish *Marrickville*, on the basis of differences between the JobKeeper scheme and the relevant Irish schemes. There was, however, no suggestion that *Marrickville* had been wrongly decided. Although McDonald J had decided that credit should be given for payments received under various Irish schemes, the criteria for receipt of grants under those schemes was not comparable to CJRS.

422. In summary, as Mr Gruder submitted in his reply submissions, the key issue was what the policyholder had to prove in order to get the CJRS. Since the policyholder did not have to prove that its business was closed down, or that the restrictions applied to it, or that there was prevention of access to that business, those matters were not the cause of the receipt of furlough payments.

423. Mr Kramer supported Mr Gruder's argument on the causation question. As with Mr Gruder, he explained the concession on causation in *Stonegate* as possibly being a consequence of the nature of the insured peril in *Stonegate*: the peril there was a pure disease cover and it applied to the "Vicinity", which would have extended to the whole of the UK. However, the insured peril in the present case was very different, and it comprised all elements of the composite peril. Any reduction in wage costs was not a consequence of those elements operating in combination.

424. The argument advanced by Mr Kramer went further than Mr Gruder's in a number of respects. The effect of his submission was that Butcher J's decision was clearly wrong on all issues concerning CJRS, and should not be followed.

425. Accordingly, Mr Kramer submitted that Butcher J had been wrong to decide that there had been any reduction in wage costs by reason of CJRS payments. He submitted that reimbursement, defrayal and funding of a cost are not reduction of that cost. They are, rather, increases in non-trading income to ensure the business can afford the costs. A reasonable policyholder would consider that the savings clause applied to matters such as rent cessation and laying-off unskilled staff and would not cover non-trading income funding expenses that had not ceased or reduced but had in fact continued. Put shortly, paying someone to keep incurring an expense is the opposite of the expense ceasing. In his oral submissions, Mr Kramer asked rhetorically what the position would be if (as happened) a recipient of CJRS repaid the government: it could not realistically be said that wage expenses had now 'unceased' or been 'unreduced'? That was because those expenses had never ceased or been reduced in the first place.

426. In relation to causation, Mr Kramer (as described above) supported Mr Gruder's argument. However, his principal point on causation was somewhat different. He submitted that proximate causation was required by the "in consequence of" language of the clause. This meant that it was necessary to find out whether the payment made was a collateral benefit. If it was a collateral benefit, then it would not be in consequence of the peril insured against. The important question here was whether the CJRS payments were, or were to be equated with, benevolent gifts.

427. In that context, Mr Kramer challenged the correctness of Butcher J's consideration of the general law: i.e. the conclusions in paragraphs [271] – [288]. He submitted that the CJRS payments should be disregarded under the general law as being collateral in nature. He said that Butcher J had been wrong to consider the question of collaterality of the payments from the perspective of the principles of law concerning subrogation. He should have applied a proximate cause analysis, and in so doing should have considered not only the cases referred to in those paragraphs of his judgment, but also a number of cases outside the insurance context. Butcher J was also wrong (in paragraph [286]) to attach significance to the failure by Stonegate to show that the UK Government intended to benefit Stonegate alone to the exclusion of insurers. The correct approach was to decide the case on principle, and there was a need to interrogate the character and broader purpose of the payment.

428. Applied to the present case, the court should conclude that the receipt of CJRS was the same as if Liberty Retail had received charitable donations from loyal shoppers and fabric fans sympathetic to Liberty's financial position during lockdowns. These would be collateral payments, and the same applied to the CJRS payments.

429. On behalf of the insurers, Mr Scorey submitted that I should follow the decision of Butcher J in *Stonegate* on the points which he decided, in particular the "cease and reduce" point. In relation to the argument on causation, Mr Scorey made a number of submissions.

430. First, the clause should be approached via the prism of its purpose; namely to avoid over-indemnification. That was the essential reason why savings needed to be taken into account. It should also be considered in the light of the approach to the coverage grant. An overtechnical approach should be avoided.

431. Secondly, furlough was not simply a gift or a donation. It was a scheme brought into effect by the government and which gave public law rights to employers. The effect of

the scheme, if an employer chose to accept the 80% furlough payments, was that the employee could no longer work for the employer, ,the employee's time was no longer the employer's, and in practical terms it belonged to the government.

432. Thirdly, the furlough scheme was meant to prop up the economy and halt or at least delay redundancies which would otherwise have occurred. The dire economic situation was at least in part the direct result of the regulations which forced most businesses to close and which placed restrictions upon all operations. The regulations had closed down the economy, thereby causing difficulty to businesses, which meant that they could not afford to pay their employees. The scheme was therefore the result of the very peril insured against under the prevention of access clause. It mattered not that the furlough payments were available to all businesses with a PAYE scheme. All businesses were affected in some way by the restrictions; at least in the sense that the economy was in effect shut down and severely damaged by the pandemic and those regulations, and nobody avoided those consequences.

433. Fourth, the core element of the peril insured against was the danger or disturbance within the relevant radius. The restrictions were caused by that danger. Precisely the same could be said about the furlough scheme. The government was prompted into action by cases of Covid-19 both inside and outside the radii of each of the premises. All of those cases had a negative impact on the UK economy because of the imposition of restrictions. The scheme was designed to mitigate the effects of the restrictions which had been imposed because of the prevalence of the virus both inside and outside the relevant radius. If a single case within the radius was good enough for the purposes of the policyholders establishing concurrent causation, then the same approach should be taken on the other side of the equation. A consistent approach to cover and the savings clause should be adopted.

434. Accordingly, there was a direct relationship between the restrictions imposed on the nation in the context of the insured peril, and the mitigating circumstances – in other words the furlough scheme – which went hand in hand with those restrictions. The furlough payments were brought in because of damage to businesses caused by the restrictions brought in by the government as a result of the pandemic.

Discussion

435. It was ultimately common ground that the present issue turns on the construction of the "savings" clauses in the relevant policy. Thus, Mr Scorey did not suggest that, if his argument on construction failed, the general law of subrogation would produce a different result. The parties therefore accepted the correctness of the approach of Butcher J, as to the potential impact of the general law, set out in paragraph [271] of his judgment in *Stonegate.*

436. On the question of whether CJRS payments did reduce the relevant costs, the issue before me is precisely the same as that considered by Butcher J. I consider it appropriate to follow his decision. I have not been persuaded, by any of the arguments advanced by Mr Kramer, that Butcher J was clearly wrong or indeed wrong at all. I think that he was right, for the reasons that he gave. I note in this regard that, in paragraph [50] of his judgment in the Dublin High Court in *Hyper Trust*, Mr Justice Denis MacDonald appears to agree with Butcher J's conclusions on this aspect of the case.

437. It seemed to me that, to a large extent, Mr Kramer's argument substantially repeated points which had been made to Butcher J and rejected by him. One new point was the reliance placed by Mr Kramer on the decision of the New South Wales Court of Appeal in *Mobis Parts Australia Pty Ltd v XL Insurance Co SE* [2018] NSWCA 342; [2019] Lloyds Law Reports IR 162. In that case, the New South Wales court had taken a different approach to depreciation, in the context of a savings clause, to that taken by Flaux J in *Synergy*. I do not regard this as a significant point for a number of reasons.

438. First, Flaux J's decision in *Synergy* was not critical to Butcher J's analysis and conclusion. Butcher J referred to *Synergy* in the context of his third consideration which lent support to his conclusion in paragraph [258]. Butcher J relied upon *Synergy* as further support for the principle that the relevant contractual provision should be construed, if there is any room for argument, to accord with the basic principle that an insurance policy is a contract of indemnity. In that context, Butcher J cited (at paragraph [267]) the judgment of Brett LJ in *Castellain v Preston* (1883) 11 QBD 380. It is not clear to me that the New South Wales Supreme Court would substantially disagree with Butcher J's proposition. Thus, at paragraph [146] of the leading judgment in *Mobis*, Meagher JA also referred to the same passage in *Castellain*, stating that "the prospect of under- or over-indemnification may colour the meaning of the language used".

439. Secondly, and in any event, I am applying English law. The judgment of Flaux J in *Synergy* sets out English law, this has been applied by Butcher J in *Stonegate*. Where there are already two decisions of first instance judges on a particular point, that point should be regarded as settled at first instance, and any challenge made on appeal. Where there are two first instance decisions which reach the same conclusion, the point is not realistically open to argument before a third first instance Judge. Indeed, that is the case when a previous first instance decision has been fully considered, and not followed, in a later decision at first instance: see *Re Cromptons Leisure Machines Ltd* [2006] EWHC 3583 (Ch) paras [1] – [4].

440. Accordingly, I reject Mr Kramer's argument that the CJRS payments did not reduce the relevant costs.

441. I next turn to the question of causation, which had been conceded in *Stonegate*. It was common ground that, in approaching this question, the word "Incident" in the expression "in consequence of the Incident" was not confined to "Damage to Property Insured", which is how the word "Incident" is defined in the Liberty Mutual standard policy wording. Accordingly, it should be read more broadly as a reference to the insured peril.

442. I agree with the submissions of the policyholders that it is appropriate to look at all aspects of the insured peril. In the context of the prevention of access clauses in issue here, I agree that this required causation to be considered by reference to all the elements of the composite peril in the relevant clause, and not simply by reference to the "danger" (i.e. the disease) element of that peril. The relevant peril was a composite peril, which included a number of elements. The question is therefore whether (looking at the Liberty Retail wording) it can be said that the CJRS payments were in consequence of the insured peril; i.e. a consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises prevented or hindered use of the Premises [etc]. Accordingly, to that extent, I do not

accept one of the ways in which Mr Scorey for the insurers argued the case, by focusing only on the disease element of the insured peril.

443. However, I agree with Mr Scorey's submission that there is no reason why the causation enquiry should focus only on the question of whether, in order to receive a CJRS payment, a policyholder needed to prove those same elements. I consider that this involves taking too narrow an approach to the causation enquiry. I agree with Mr Scorey's submission, as summarised above, that the CJRS or furlough scheme cannot be regarded as wholly separate and divorced from the restrictions which were introduced in consequence of the widespread prevalence of Covid-19. On the contrary, it is clear that they were very closely connected. It is obviously no coincidence that the first announcement of the furlough scheme on 20 March 2020 was on the very same day that the government announced that it would be closing down a variety of businesses. In his statement on that day, the Prime Minister said that the government was telling cafes, pubs, bars, restaurants, nightclubs, theatres, cinemas, gyms and leisure centres to close on that night as soon as they reasonably could. When announcing the scheme on that day, Mr Sunak made express reference to the fact that the government was "now closing restaurants and bars". Those statements were made on Friday 20 March 2020. In the following days, including on the next working day (23 March 2020) further restrictions on other businesses, including retailers such as Liberty Retail, were announced.

444. All of this happened prior to the actual introduction of the CJRS on 15 April 2020, which Mr Scorey submitted was the appropriate date on which to consider causation in the present context. I agree, and indeed the policyholders did not dispute that this was the critical date. By the time of the introduction of the scheme on 15 April 2020, the key restrictions relied upon by the policyholders in the present case had been introduced. The furlough scheme was thus announced at around the same time as restrictions were being imposed, and was formally introduced alongside the imposition of those restrictions. As Mr Scorey submitted, the government had appreciated the severe economic impact of the disease and the restrictions which it was introducing, and the furlough scheme was to mitigate against their effects. Furlough was therefore part and parcel of a series of measures introduced by the government.

445. It is of course true that the furlough scheme was not simply a consequence of the restrictions on the particular businesses operated by the policyholders in this case. It was a consequence of restrictions which affected a very large number of businesses across the economy as a whole. However, the effect of the decision of the Supreme Court in the *FCA test case* is that, when considering the operation of the insured peril, a concurrent causation analysis is to be applied. It is therefore sufficient, for the purposes of coverage, for a policyholder to show loss flowing from a combination of an insured peril which affected its business together with similar perils which affected other businesses. I consider that the same approach can and should properly be taken when considering causation in the context of the receipt of CJRS payments. It is therefore sufficient to show that the CJRS (and thus the payments made pursuant to that scheme) was brought into being in consequence of a combination of government restrictions affecting the business of each claimant policyholder in combination with restrictions affecting the business of other policyholders.

446. In the *FCA test case*, the Supreme Court considered that the overriding principle of considering how the words would be understood by a reasonable policyholder meant

that, if possible, the "trends" clauses should be construed consistently with the insuring clauses in the policy: see paragraphs [77] and [260] – [261]. I think that a similar approach should be taken in relation to the "savings" clause. Thus, as Mr Scorey submitted, the case against the insurers in relation to the peril is a concurrent causation analysis: there was a relevant action by the statutory authority following disease within 1 mile of the premises, and that interfered with the policyholders' business. Equally, the furlough savings were in consequence of what had happened: they were brought in because of damage to businesses caused by the restrictions on a large number of businesses, including those of the claimants, brought in by the government as a result of the pandemic. I agree with Mr Scorey that what works on one side of the line should also work on the other, and that it is not appropriate to take a different and much stricter approach to causation in the context of savings than in the context of the insured peril.

447. I do not consider that the decision of the Full Federal Court of Australia in *Marrickville* dictates any different result. The court in that case was not considering the factual circumstances of the CJRS which was introduced by the UK government, as described above. It is by no means clear that a close parallel existed between the factual circumstances in Australia and those in the United Kingdom. It also does not appear that any argument was advanced to the court along the lines of the case advanced by Mr Scorey in the present case, and which I find persuasive for the reasons set out above. The decision in that case is, of course, not binding upon me, and I note that (in different respects) Butcher J in *Stonegate* and MacDonald J in *Hyper Trust* have distinguished that case.

448. In *Marrickville*, the court took a narrow approach to the causation question, by focusing on the criteria for the JobKeeper payments. As indicated above, I agree with Mr Scorey that the causation question should not be so narrowly focused. In *Hyper Trust*, McDonald J also took a broader approach to the causation question, and reached the conclusion that credit for various government payments received by the policyholders should be given. Thus, at paragraph [73] of his judgment, McDonald J referred to the importance of putting the relevant Irish government supports in context. The judge then traced the development of the restrictions imposed by the government. When dealing with the Temporary Wage Support Scheme, or "TWSS", he said (at [76]) that it was clear that "the mitigation of the adverse economic consequences resulting from the spread of COVID-19 was introduced in lockstep with further public health emergency restrictions … and that it was done with a view to alleviating the impact of those restrictions". He then described (at [77]) the enactment of the relevant statute on 27 March 2020, and said (at [80]) as follows:

> "As noted above, s. 28 of the 2020 Act deals with the establishment of the TWSS which is plainly one of the extraordinary measures contemplated by the recital quoted above. The TWSS was expressly designed to mitigate the adverse economic consequences of the disruption to business caused by the pandemic. As previously noted, it was introduced in lockstep with the ongoing closure orders which had immediate adverse economic impacts on businesses including public houses. Section 28(2)(a) provided that s. 28 should apply where:-
>
> *"the business of an employer has been adversely affected by Covid-19 to a significant extent with the result that the employer*

> *is unable to pay to a specified employee the emoluments the employer would otherwise have normally paid to him or her".*"

449. At paragraph [81], McDonald J said that the language of section 28(2)(a) of the 2020 statute meant that "it applied only where the business of the employer had been adversely affected by COVID-19". In that regard, there was a distinction between the criteria for payment under the TWSS, and the criteria for payment under the Australian JobKeeper rules. The Guidelines issued by the Irish Revenue Commissioners had similarly required that "a business must be experiencing a significant negative economic disruption due to the COVID-19 pandemic": see [83].

450. The judge's conclusion on the TWSS payments was that causation had been proved, and that credit should be given. He said at [89]:

> "Here, the relevant chain of events in respect of the savings is easily mapped. First, there were the outbreaks of COVID-19 within the 25 mile radii; second, there were the series of Government closures, each of which was concurrently proximately caused by each of those outbreaks and by all outbreaks outside those radii; third, the 2020 Act was enacted to address the economic fallout from the restrictions and closures imposed by the Government as a consequence of the outbreaks. While s. 28 of the 2020 Act may be said to have been intended to apply more widely than in the context of closures, it could not plausibly be suggested that the closures in place at the time of its enactment (and which were expected to continue thereafter) were not a proximate cause of the TWSS scheme established under the section. Given that those closures were proximately caused by the outbreaks within the 25 mile radii, it follows that the savings available under the TWSS were proximately caused by the insured peril. Furthermore, there can be no question but that the payments were made "in respect of … the charges and expenses of the business payable out of gross profit" to quote the language of the savings clause. The payments were made solely in respect of the salaries and wages of employees and they were accordingly made in respect of the expenses of the business payable out of gross profits. It follows that all of the conditions of the savings clause have been satisfied in respect of the TWSS payments. I am therefore of the view that the payments fall to be deducted under the savings clause."

451. Accordingly, McDonald J was not focused solely on the criteria for payment under the TWSS, but applied a broader causation analysis. Furthermore, it was no obstacle to the broad causation analysis that the criteria under section 28 of the 2020 enactment applied "more widely than in the context of closures". In other words, an Irish business could obtain TWSS even if its own business had not closed. He also said, in the passage quoted above, that "it could not plausibly be suggested that the closures in place at the time of its enactment (and which were expected to continue thereafter) were not a proximate cause of the TWSS scheme established under the section". It seems to me

that the position is the same in the present case in the light of the factual background to which I have referred. Thus, it cannot plausibly be suggested that the closures of the businesses of the various claimants in these proceedings (and which lie at the heart of their claim for indemnity) were not a proximate cause of the CJRS scheme.

452. Whilst there are differences between the criteria for payment under the TWSS as compared to the CJRS, I do not consider that any of these differences are such as to affect the causation analysis. In any event, I consider that the approach of McDonald J in *Hyper Trust* is consistent with the causation analysis advanced by Mr Scorey, which I find persuasive.

453. Accordingly, I reject the narrow approach for which Mr Gruder contended. I accept Mr Scorey's submission that there is a sufficient and indeed proximate causal connection between the composite insured peril and the CJRS payments which were made and thus reduced the wage costs of the business.

454. This conclusion answers Mr Kramer's separate argument on causation, which focused on the need for there to be proximate causation between the insured peril and the CJRS payment.

455. It is therefore unnecessary to deal in any detail with Mr Kramer's argument as to the (alleged) collateral nature of the CJRS payments, and his criticism of the judgment of Butcher J. It suffices to say that I was unpersuaded that the CJRS payments were, or could be equated with, benevolent gifts. They were, as described above, a mitigating measure introduced in order to mitigate the economic impact of the restrictions imposed by the government. I also consider it appropriate to follow Butcher J's decision that insurers would be subrogated to these recoveries under the general law. Butcher J considered the leading insurance cases in this area, and I was not persuaded that his analysis was clearly wrong, or indeed wrong at all. Once the conclusion is reached that (applying the general law) an insurer would be subrogated to these recoveries, any argument that they are "collateral" cannot be sustained.

456. I therefore answer issues 22 and 23: **Yes.**

G: Allianz Wording: claim by IEH

457. The relevant clause in this case is S/30/1:

> "**S/30/1 Endanger Life or Property**
>
> Denial of Access Endanger Life or Property
>
> Any claim resulting from interruption of or interference with the Business as a direct result of an incident likely to endanger human life or property within 1 mile radius of the premises in consequence of which access to or use of the premises is prevented or hindered by any policing authority, but excluding any occurrence where the duration of such prevention or hindrance of us[e] is less than 4 hours, shall be understood to be loss resulting from damage to property used by the Insured at the premises provided that

i) The Maximum Indemnity Period is limited to 3 months, and

ii) The liability of the Insurer for any one claim in the aggregate during any one Period of Insurance shall not exceed £500,000"

458. The first issue, which gave rise to extensive submissions, is:

Issue 28 (1)

Does a "*case [or cases] of COVID-19*" amount to an "*incident likely to endanger human life*" within the meaning of Clause S/30/1?

The parties' arguments

459. On behalf of IEH, Mr Gruder KC submitted that "incident" is something which happens or occurs. "Endanger" means put something at risk or in danger. "Likely to endanger human life" means that the thing which occurs is something which is liable to put human life at risk or in danger. Covid-19 is a life-threatening illness, and a case or cases of Covid-19 is therefore properly to be regarded as an incident likely to endanger life. Occurrences of a contagious life-threatening disease are well within the ambit of an incident or incidents likely to endanger life.

460. As the argument on this issue developed, the central question was whether a case of Covid-19 could, in the context of this clause, be considered to be an "incident".

461. Mr Gruder thus submitted that the natural and ordinary meaning of "incident" was something which happens or occurs. That would be how the word would be understood by the reasonable policyholder. The word "incident" was synonymous with the words "occurrence" and "event". A case of Covid-19 was something that happened at a particular time, in a particular place, in a particular way. It therefore amounted to an "incident", as well as an "occurrence" or "event". There was no requirement that the "incident" should manifest itself or otherwise be obvious. The Supreme Court in the *FCA test case* had decided that cases of Covid-19 were each an "occurrence", and it therefore followed that each was also an "incident" (and indeed an "event") for the purposes of this clause. The clause itself goes on to use the word "occurrence" and this shows that this is indeed synonymous with "incident".

462. There was nothing in the clause which required the sufferer, or anyone else, to know that he or she had the disease. An asymptomatic case is nevertheless an occurrence, as is clear from the declarations made by the Supreme Court. There could be an incident even if people were not aware of it: for example, the notorious poisoning in Salisbury of the Skripals with the Novichok nerve agent in March 2018 was an incident, even though the facts did not become clear for some time. With Covid-19, the UK government knew that the "enemy" was there, and that there were hundreds of thousands of cases, even if each individual case had not been identified. To introduce a requirement that the incident had to be "manifest" was not warranted by the clause, and would in substance reintroduce "but for" causation. Overall, it made no sense to say that a case of Covid-19 was an "occurrence" or an "event", but to deny that it was an "incident".

463. On behalf of Allianz, Mr Dougherty KC initially advanced a submission that a case of Covid-19 would not itself be an "occurrence" or an "event", and it therefore followed that it could not be an "incident". He drew a distinction between (i) having the disease and (ii) transmitting or contracting it. The former was a state of affairs, and was neither an event, occurrence or an incident. The latter could be regarded as an event or occurrence (but not an incident),but would require proof as to when a particular person transmitted or contracted the disease. He submitted that, in the context of Covid-19, there could be an "occurrence" or "event" other than at the time when the disease was transmitted or contracted: for example, if someone collapsed outside a theatre. However, he did not accept the proposition that if someone with Covid-19 entered particular premises, or entered a radius around particular premises, that that would be an "occurrence" or an "event".

464. In the end, however, Mr Dougherty did not pursue this line of argument, but reserved the right to do so in other cases. I therefore need not address it in detail (and Mr Gruder did not respond in detail). It suffices to say that the submission is difficult to reconcile with the decisions of the Supreme Court in the *FCA test case*, as well as *Various Eateries* and *London International Exhibition Centre*. In particular, in *Various Eateries* at [25], Butcher J said:

> "In my view, however, the disease must be regarded as "occurring" each time it was contracted within the Vicinity, which will have involved a transmission within the Vicinity, and also each time someone with the disease entered the Vicinity".

465. At present, I see no reason why there should not be an "occurrence" or an "event" when there is a transmission within the relevant radius (or premises), or when a person with the disease enters the radius (or premises). On this basis, once it is proved that there is a person with Covid-19 who is within the radius or the premises, it necessarily follows that there has been an occurrence or an event. That person must have acquired the disease in one of two situations: either (i) by contracting it within the radius or premises (which would be an occurrence even on Mr Dougherty's approach), or (ii) by contracting it outside the radius or premises, and then entering the radius or premises with the disease (which would be an occurrence applying Butcher J's approach in *Various Eateries*). In practical terms, this means that proof of a person within the radius with the disease is sufficient proof of an occurrence. Thus, the declarations of both the Divisional Court and the Supreme Court, under the heading "Prevalence", refer to proving "actual prevalence". In particular, paragraph 8.2 of the relevant declarations refer to the various ways in which a policyholder can "prove the presence of Covid-19 within the relevant policy area". This includes, for example, "specific evidence of a case or cases of COVID-19 in a particular location within the relevant policy area".

466. Reverting now to the argument that Mr Dougherty did pursue: he submitted that it was now settled that an "incident" is something which occurs at a particular time, at a particular place, and in a particular way. He referred in that connection (as indeed had Mr Gruder) to paragraphs [232] and [404] of the judgment of the Divisional Court in the *FCA test case*. However, he submitted that it was important to read "incident" in the present case in the context of the clause as a whole. So read, it required a manifest event which is unusual, unpleasant or dangerous. If there was nothing more than an "undetectable happening", a reasonable policyholder would not describe that as an "incident". The clause here required the prevention or hindrance of access or use by the

policing authority to be "in consequence of" the relevant incident. In order for the police to respond to the incident, it will have to have been apparent or manifest, in the sense of being observed or observable.

467. Mr Dougherty said that this was the effect of the decision of the Divisional Court on the Hiscox NDDA clause at paragraphs [404]-[405]. That decision had not been appealed to the Supreme Court. Whilst the Hiscox NDDA clause and the present clause are not identical, the word "incident" is used in the present case in materially the same way as in the Hiscox NDDA clause. Whether or not that decision is strictly binding, there is no principled basis to depart from the Divisional Court analysis. In *Corbin & King*, Cockerill J referred to the Divisional Court's decision on this point, and did not question it or suggest that it had been overtaken by the Supreme Court's analysis.

468. In his oral submissions, Mr Dougherty submitted that the word "incident" lends a distinct colour to "event" or "occurrence". Whilst every incident is an event, not every event is an incident. It connotes something overt, not latent. An undetectable or undiscoverable happening could not be an incident. Since "incident" in the present case presupposed a response by the policing authority, it obviously related to something manifest and apparent. It could not describe something which no-one knew about at the time.

Discussion

469. Both parties took as their starting point the proposition that an "incident" is something which occurs at a particular time, at a particular place and in a particular way. In paragraph [404] of the Divisional Court's judgment, the court said that the word:

> "… should be given the same essential meaning as "an event": something which happens at a particular time, at a particular place, in a particular way".

This is therefore the same meaning as is given to an "occurrence": see e.g. the judgment of the Supreme Court in the *FCA test case* at paragraph [69], where the Supreme Court described the cases of Covid-19 as "thousands of separate occurrences".

470. The use of the word "incident" as a synonym for event or occurrence is also apparent in various dictionary definitions. The definition in the Oxford Dictionary of English, 3rd edition is: "an instance of something happening; an event or occurrence". The online Oxford English Dictionary has a similar definition: "an occurrence or event viewed as a separate circumstance".

471. However, it seems to me that the Divisional Court also considered that "incident", in ordinary usage, has a character which means that it cannot precisely be equated with "occurrence". The principal argument there advanced by insurers was that the pandemic as a whole could not be described as an occurrence or an incident, and that the FCA was wrong to contend otherwise. However, it was also argued, in the alternative, by the FCA that the requirement of an "incident" was satisfied by the occurrence of a case of Covid-19 within the relevant radius: see [395]. The insurers' response was (see [398]) that:

> "… the presence of someone within the one-mile radius or in the vicinity of the premises who had Covid-19 could not possibly be described as "an incident". The person might come and go without knowing he had the disease and people might not know he was infected. Such an undetectable happening could not be "an incident""

472. The Divisional Court accepted (in paragraph [405]) that the pandemic as a whole could not be described as incident. The court also rejected the FCA's alternative argument, and (as it seems to me) accepted the submission made on behalf of the insurers set out above. At the end of paragraph [405], the Divisional Court said:

> "It is no answer for the FCA to say that there is an incident if someone with Covid-19 is present within the one-mile radius. As Mr Gaisman QC [counsel for the Hiscox insurers] said, that person might or might not know that he or she had Covid-19 and, in any event, it is a misnomer to describe the presence of someone in the radius with the disease as "an incident" for the purposes of the clause."

473. This passage in the Divisional Court's reasoning cannot be dismissed as a throwaway remark. It was addressing the arguments advanced by both parties, and the court's decision was reflected in one of the declarations made following the judgment:

> "The national COVID-19 pandemic was not and is not an "incident" and nor is it "an incident occurring…within a one mile radius of the insured premises" (Hiscox1-2 and Hiscox4) nor "an incident occurring…within the vicinity of the premises" (Hiscox2). Nor is there an "incident" if someone infected with COVID-19 so that it is diagnosable is present within a one mile radius (Hiscox1-2 and Hiscox 4) or vicinity (Hiscox2)."

474. Mr Gruder criticised the reasoning of the Divisional Court at the end of paragraph [405], submitting that it was not consistent with its earlier conclusion that an incident is something that happens at a particular time, at a particular place, in a particular way. There is some force in that submission. However the court was looking at the word "incident" in normal usage, and did not consider that there could be an "incident" merely because a person had Covid-19 at a particular place and at a particular time, but neither that person nor anyone else knew at that time that he/ she was suffering from the disease. I also consider that the word "incident", in ordinary usage, does connote a happening which is apparent at the time, often to very many people. Notwithstanding that it can be used synonymously with "occurrence", it would be unusual to use the word "incident" to describe something which no-one perceived at the time. Mr Dougherty accepted that a burglary which is witnessed by no-one, and whose existence is not discovered until weeks later, would nevertheless be an "incident". However, even that incident would be apparent, at the time, to the burglar, and it is not therefore an example of an incident of which no-one was aware at the time. Given the ordinary usage of "incident" to describe events which are apparent at the time, and that the overriding question is how the words of the contract would be understood by a reasonable person in the position of an ordinary policyholder, I cannot conclude that the Divisional Court

was wrong in the conclusion that was reached, on the Hiscox wording, at the end of paragraph [405].

475. My conclusion that, in the present case, I should not depart from the Divisional Court's decision on the NDDA wording, is further supported by the approach of Cockerill J in *Corbin & King*. Cockerill J was not there concerned, as I am, with a clause which referred to an "incident". However, she did address the Hiscox NDDA wording in paragraphs [156] – [157], principally in order to distinguish that Hiscox clause from the wording in the contract before her. However, in so doing, she said that the word "Incident" is "capable of lending a very distinct colour to a wording". She also said that the word "incident" when

> "teamed with an authority wording led off by *"local authority, police, emergency services ..."* and a short franchise period would certainly have a real sense of pointing to the paradigm situation."

476. In the present case the relevant authority is any "policing authority": an expression which, as discussed further below, refers to the police or similar bodies, rather than central government. There is also a short franchise period of 4 hours. Cockerill J considered that these factors, combined with the use of the word "incident", would point to the "paradigm situation"; i.e. cases of unexploded bombs, structures at risk of collapse or an affray (referred to in paragraph [139] of the judgment). In the present case, these factors provide additional reasons why I should not depart from the Divisional Court's conclusion.

477. I have considered whether the present wording can be distinguished from the Hiscox NDDA wording, and specifically because the present wording refers to both "incident" and "occurrence". Mr Gruder submitted, therefore, that this showed that "incident" is indeed being used synonymously with "occurrence", and that therefore the former should be given the same meaning as the latter. Mr Dougherty submitted that, in the clause, "occurrence" encompassed both the incident and its consequence, and that therefore it was not a precise synonym. Mr Gruder said that this was wrong, and they were synonyms: the first part of the clause referred to the "incident" and its consequence, and the second part ("but excluding any occurrence where the duration of such prevention or hindrance of use is less than 4 hours") similarly referred to the "occurrence" and its consequence. I do not need to decide between these two competing arguments, each of which had some force. In my view, the important point is that the coverage provided by the clause does indeed use, at the outset, the word "incident". This word does lend some "colour" to the clause, and I do not consider that the later reference to "occurrence" negates this. I am not therefore persuaded that the present clause can sensibly be distinguished from the Hiscox NDDA clause.

478. Mr Gruder also referred to certain passages in the decision of the Supreme Court, in particular the brief discussion in paragraphs [92] to [93] of the word "incident" in the context of certain clauses. The Divisional Court's conclusion on the Hiscox NDDA clause was not appealed. I did not consider that the decision of the Supreme Court addressed, or cast doubt on, the conclusion of the Divisional Court in paragraphs [404] – [405]. Although in certain respects, as Cockerill J said in *Corbin & King*, the Supreme Court's judgment had "moved the goalposts", she did not say this in the context of the present issue of construction of the Hiscox NDDA clause. Indeed, paragraphs [157] –

[158] of her judgment do not cast any doubt on the correctness of the Divisional Court's decision in this regard.

479. There was one further aspect of issue 28 (1), namely whether a case or cases of Covid-19 were "likely to endanger human life". This aspect of issue 28 (1) did not feature in Mr Dougherty's oral submissions, no doubt because he had better points.

480. In any event, I considered that Mr Gruder's submissions on this point were compelling. He submitted that, in the context of this clause, "likely to endanger human life" was something that involved a real risk to human life, even though statistically the chances of death resulting are much lower than 50%. I agree that, applying cases such as *Re H Minors* [1996] AC 563, the word "likely" means "may well" or "involving a real risk", given that it is followed by the words "to endanger". Human life was clearly endangered by Covid-19, with many in the community – in particular the elderly and infirm, or people who suffered from underlying health conditions including being immunocompromised – having a significantly increased risk of death when compared to other younger and healthier people in the population at large.

481. Furthermore, in the *FCA test case*, one insurer (Arch) accepted – rightly in my view – that the Covid-19 pandemic was an "emergency likely to endanger life": see paragraph [310] of the Divisional Court's judgment. Another insurer (Ecclesiastical) accepted that the pandemic was "an emergency which could endanger human life" (see paragraph [360]). The Divisional Court was clearly of the same view: see paragraph [405]. In my view, if a case of Covid-19 had in itself qualified as an "incident", then the further requirement that it should be "likely to endanger human life" would also be satisfied.

482. Accordingly, my answer to this question is that:

A case [or cases] of COVID-19" does not, in and of itself/ themselves, amount to an "incident likely to endanger human life" within the meaning of Clause S/30/1. Although a case or cases of COVID-19 is/are "likely to endanger human life" within the meaning of the clause, it/they does not in and of itself/ themselves amount to an "incident".

483. **Issue 28 (2):**

If a "*case [or cases] of COVID-19*" does amount to "*an incident likely to endanger life*" as those words are used in Clause S/30/1, can "*threatened*" or "*anticipated*" case(s) of COVID-19 also amount to "*an incident*"?

484. It was common ground that threatened or anticipated cases of Covid-19 do not amount to an "incident" for the purposes of the relevant clause. Accordingly, the answer to this question is: **No.**

485. **Issue 28 (3):**

If a "*case [or cases] of COVID-19*" does amount to "*an incident likely to endanger life*" as those words are used in Clause S/30/1, does the wording of Clause S/30/1 require any such case (or cases) to have occurred within a 1 mile radius of the premises, or can the case (or cases) occur outside of the 1 mile radius, provided it

is likely to endanger human life at any of the Claimants' premises, or within 1 mile of the Claimants' premises?

The parties' arguments

486. For IEH, Mr Gruder submitted that it was not necessary for the incident itself to occur within the 1 mile radius. It was sufficient that the incident endangers human life or property within that radius. The phrase "within 1 mile radius of the premises" follows directly on from the words "human life or property". It therefore did not qualify the word "incident". This approach was consistent with commercial common sense. What mattered was whether human life or property within a 1 mile radius of the premises was likely to be endangered. The fact of a threat to life or property at or near the premises would lead to access or use of the premises being restricted. It is irrelevant whether the source of that danger is at or near the premises. Mr Gruder gave the example of the Mumbai terrorist attack in 2007. The terrorists were marauding around the whole of Mumbai, shooting at will. There was a threat to life and property all over Mumbai irrespective of whether there were any terrorists actually present within 1 mile of a particular premises closed by the authorities.

487. Mr Gruder submitted that it would not be difficult to show whether or not there was a danger to life or property within 1 mile of the premises. The response of the authorities would show that very clearly.

488. For Allianz, Mr Dougherty submitted that the incident must have occurred within the 1 mile radius, not simply the effect of the incident. The words "likely to endanger human life or property" describe the nature of the incident, and so cannot be divorced from it. Without those words, the whole meaning of "incident" would be unclear. Furthermore, the parties are unlikely to have intended the clause to operate in such a way that it is the effect of the incident which must occur in the radius. It is easy to identify whether the incident had occurred within the radius. It is much harder to identify by way of geographic location where the effect of something occurs.

489. In his oral submissions, Mr Dougherty said that the response of the authorities was not a satisfactory basis for concluding that there was a threat to life or property at a particular place. A police cordon may be set up across a wide area. It does not show that there is a risk at every place within the cordon. He also submitted that it was difficult to see why the parties would have included a radius at all, if all that mattered was whether there was a threat which had resulted in access or use of the premises being prevented or hindered.

Discussion

490. On this issue, I considered that the insurers' submissions were more persuasive. I agree that the phrase "likely to endanger human life or property" is itself descriptive of the incident. So is the phrase "within 1 mile of the premises". This results in an interpretation which can be applied in a certain and straightforward way. It is also consistent with the choice of a 1 mile radius. If the incident could occur anywhere at all, then it is difficult to see why the parties would have specified a 1 mile radius as a requirement. If all that mattered was that there should be an incident somewhere which threatened human life or property, then the only concern of the parties would be whether access or use of the premises was prevented or hindered. It makes little sense to add in

a requirement (which IEH's case posits) that there should be a danger to life or property up to a mile away.

491. Mr Gruder referred to the decision of Lord Mance in the *China Taiping* award, paragraphs [55] and [65]. However, Lord Mance was considering wording which was materially different, namely: "an emergency threatening life or property in the vicinity of the Premises". It is not difficult to see why he was inclined to think that the "emergency" might perhaps extend to an emergency outside the vicinity.

492. Mr Gruder also referred to clause S/29/1 (b) which covered denial of access "due to the suspected or actual presence of an incendiary or explosive device on or in the vicinity of The Premises". He submitted that the parties were therefore capable of being specific as to the location or source of prevention of access. In my view, however, clause S/29/1 is of no real assistance in construing the very different wording of clause S/30/1, and provides no guide as to how to interpret the words of the latter clause. I also agree with the point made, at different stages, by both counsel: namely that the additional clauses such as S/29/1 and S/30/1 appear to be ready-made clauses which were available and incorporated on what could be described as a "pick and mix" approach. The clauses certainly do not bear the hallmark of an elegant and coherent drafting approach. For example, clause 29/1 refers to "The Premises", whereas clause 30/1 refers to "the premises". Clause S/36/1 (discussed below in connection with policy limits) refers to a "Single Property Loss and/or Single Business Interruption Loss", in circumstances where neither of those terms is defined.

493. Accordingly, the answer to this question is that: **a case must have occurred within 1 mile of the premises.**

494. **Issue 28 (4):**

What do the words "by any policing authority" in Clause S/30/1 refer to? Do they, for the purposes of the present case, refer to and/or include only the police, or also the UK Government, or do they refer to and/or include something else?

The parties' arguments

495. The factual background is that the IEH Claimants' premises were closed from 21 March 2020 until 20 August 2020. The closure of theatres was mandated, in England, first by the 21 March Regulations and then by the 26 March Regulations. In Scotland, the applicable regulations came into force on 26 March 2020.

496. Mr Gruder submitted that it was an unduly restrictive reading of "any policing authority" to say that access was prevented by the government and that the government does not constitute a policing authority. The ordinary and natural meaning of "any policing authority" is not "the police". A reasonable policyholder would not understand those words to mean: the police and only the police. Those words would be understood as meaning any person, body or entity which has a lawful right or power "to police": in other words, to regulate or control, require or prohibit certain action, either directly or by giving instructions to others (such as the police) to do so. Thus the words "any policing authority", in the context of the clause, meant any person, body or entity which had lawful authority to prevent or restrict access to the premises. They meant the same

as "by the Police or other Statutory Authority" in the Liberty Mutual wording addressed earlier.

497. This construction was supported by other clauses. Clause S/29/1 referred to the "actions of or on the order of the Police and/or the Government or any local Government body". This clause showed that the word "the Police" was used when the draftsperson so intended. Clause S/30/1 simply adopts a more economical approach, intended to encapsulate any person or entity with the authority to police.

498. In his oral submissions, Mr Gruder underlined the importance of construing this provision in the light of the fact that (as IEH submitted) a serious infectious disease is an incident likely to endanger life. "Policing authority" referred to the authority with the power to direct and control access to the premises in reaction to that incident. The authorities dealing with threats to life are or include central or local government, depending on the nature of the incident. Here, the parties contemplated a fairly long interruption: there was a 4 hour franchise and an indemnity period of 3 months. In the normal course of events, police deal with incidents more quickly. The clause was therefore dealing with more substantial incidents than the police would usually be dealing with. Mr Gruder accepted that the police were included within the expression "any policing authority". But the clause did not refer exclusively to the police, and there was no reason to read the words down so as to refer only to the police or something like the police.

499. Mr Gruder gave various examples of how others, apart from the police, may be "policing". The border between countries may be policed by, for example, a United Nations force. Parents may "police" their children. A cricketer may police the boundary. To police simply meant to regulate or control. Any body with lawful authority to give orders to prevent or hinder access to the premises would be a policing authority.

500. Mr Dougherty submitted, in his skeleton argument, that the words "any policing authority" referred straightforwardly to the police. That was the ordinary meaning of those words as a matter of the natural language of the clause. "Policing" meant the act of policing, and this was the responsibility of the police. In his oral submissions, Mr Dougherty accepted that the phrase may extend beyond the police, because the clause could be read as focusing on the function of the relevant authority rather than its title. He identified various bodies which might be said to carry on policing functions: for example, the highways authorities, coastguard, border forces and emergency services. There was, however, no need to decide where the edges lay, since on no realistic basis could it include central government still less the Secretary of State for Health and Social Care (at the material time, Matt Hancock) who issued the relevant regulations. Their functions were fundamentally different from those who were policing the rules. The central government was not "policing" the closures: it was ordering or mandating or legislating for them.

501. Mr Dougherty submitted that the context in which the expression "policing authority" appears is also relevant. Prevention or hindrance of access or use caused by an incident within 1 mile of the premises would most naturally be by reason of road closures, erection of cordons, or sealing up of buildings. These are all powers which the police have, and the police (not the central government) would be the most likely candidate to exercise them.

502. Accordingly, an ordinary person would understand "any policing authority" to refer to those with authority to carry out policing and thus to enforce the law. That person would not understand it to refer to those who regulate conduct, by directly or indirectly giving instructions to others. People who issue regulations are performing a different function. The expression "statutory authority", appearing in the Liberty Mutual wording and various other clauses, is clearly wider than "policing authority". IEH's argument denudes the word "policing" of any real meaning. The government was not a policing authority simply because it set out restrictions imposed by law or regulation.

503. IEH's argument was not assisted by the possibility that if the law was disobeyed by IEH, enforcement action might be taken by the police. Here, IEH properly closed their premises after the March regulations had been brought into force, and no policing was required.

Discussion

504. On this issue, I consider that the submissions of Allianz, as summarised above, were more convincing and persuasive than the contrary arguments advanced by IEH. I do not consider that a reasonable policyholder, reading the policy, would consider that the words "any policing authority" referred either to central government or a government minister such as Matt Hancock. The words immediately bring to mind the authorities which enforce the law, rather than those who decide what the law should be.

505. The "policing" authority that naturally springs to mind is the police, but I think that Mr Dougherty was right to accept that the clause extends to other bodies that carry out policing functions. The Oxford English Dictionary definition of "policing" is:

> "To control, regulate, or keep in order by means of a police force or similar body; to provide with a police force."

506. This definition, and indeed the words "any policing authority", therefore covers both a police force or a "similar body". I do not think that any reasonable policyholder would consider that central government, or a government minister, is a similar body to a police force. I agree with Mr Dougherty that the functions of police or similar bodies on the one hand, and central and local government on the other hand, are very different. I also agree that the expression "statutory authority" is self-evidently much wider than "policing authority".

507. In *Al Mana Lifestyle Trading LLC and others v United Fidelity Insurance Co PSC and others* [2023] EWCA Civ 61, Males LJ agreed (at [21]) with the submission of counsel that impressions, as well as first impressions, intuition and judgment may be as powerful a tool as intricate linguistic and contextual analysis, when seeking to discern the meaning of a contract. My first impression when reading the clause, and the parties' arguments, was that it was a very considerable stretch for IEH to try to bring the actions of the government or Mr Hancock, in relation to the March regulations, as being the prevention of access by "any policing authority". That remains my view, essentially for the reasons given by Mr Dougherty, after considering the detailed arguments advanced by counsel.

508. I have already indicated that I hesitate before deriving assistance in interpreting Clause 30/1 from the drafting of one of the other additional clauses. However, I think that the

conclusion that I have reached – namely that the ambit of "any policing authority" is narrower than the construction advanced by IEH – is reinforced by the much broader drafting in Clause S/29/1 ("order of the Police and/or the Government or any local Government body"). I do not think that it would occur to any reasonable reader, given the proximity of the clauses, that "policing authority" in clause S/30/1 was simply a shorthand way of encapsulating the authorities described in Clause S/29/1. The reasonable reader would, rightly in my view, consider that Clause S/30/1 referred to a narrower category of authority – namely the police or similar bodies whose function was to ensure that the law was obeyed and enforced – and would not consider it to extend to central or local government.

509. Accordingly, I answer this question as follows: **Clause S/30/1 refers to the police or other bodies whose function is to ensure that the law is obeyed and enforced. It does not extend to central government or the Secretary of State for Health and Social Care**.

510. **Issue 28 (5):**

Does Clause S/30/1 require the prevention or hindrance of access or use to be "*by any policing authority*" or is it sufficient that the prevention or hindrance is by another authority whose actions might ultimately be enforceable or enforced by the police?

511. This question has, in my view, already effectively been answered in relation to Issue 28 (4). The clause requires that access or use of the premises is prevented or hindered "by any policing authority". They therefore require the prevention or hindrance to be by the policing authority itself. An ordinary policyholder would not read them as encompassing a prevention or hindrance by another authority whose actions might ultimately be enforceable by the police.

512. In the present case, there was no enforcement action against IEH by the police, because IEH quite properly obeyed the law and shut its various theatres. However, as Mr Dougherty correctly submitted, a person simply obeying the law is different to a situation where there is an intervention by the police or another policing authority. If a pub shuts its doors at the time required by its licence, it is not being closed by a policing authority: it is simply complying with its licence and applicable regulations. Similarly, if a person adheres to the 20 mph speed limit in London, and does not drive the wrong way down one-way streets, that is not a consequence of any intervention by a policing authority: it is simply a person complying with the law as laid down by Parliament or local government.

513. Accordingly, I answer this question as follows: **Clause S/30/1 does require the prevention or hindrance of access or use to be "by any policing authority". It is therefore not sufficient that the prevention or hindrance is by another authority whose actions might ultimately be enforceable or enforced by the police.**

514. **Issue 28 (6):**

Is Clause S/30/1 on its true construction intended to provide cover for prevention or hindrance of access or use by a policing authority in consequence of case/s of Covid-19 within a 1 mile radius of the premises, where there is a pandemic and most such cases in fact occur outside the 1 mile radius?

515. This issue was addressed only briefly in Mr Dougherty's written submissions. In his oral submissions, he made it clear that Allianz was not seeking to go behind the Supreme Court's approach to causation. He was not seeking to run any wider point beyond his arguments on "incident" and "any policing authority". Issue 28 (6) did not therefore require any further analysis beyond the language of Clause S/30/1 already considered in the context of "incident" and "any policing authority".

516. In my view, there is no further or wider point available to Allianz in the light of the Supreme Court's decision on causation. If the other requirements of Clause S/30/1 are satisfied, so that there is a relevant "incident" and relevant action "by any policing authority", then it is no answer to say that there was a pandemic and that most cases of Covid-19 occurred outside the 1-mile radius. I answer this question: **No**.

517. In the course of his submissions on this and other issues, Mr Dougherty sometimes referred to the localised nature of the "police", albeit that it was not a point which (as he said) he sought to push. I do not consider that an argument, based on the proposition that the police generally operate locally rather than nationally, carries matters any further forward. There are some police who operate nationally, as paragraph [72] of the *Taiping* award explains. Perhaps more importantly, however, Mr Dougherty accepted that "any policing authority" was not confined to the police, but extended to other bodies. He was not able to submit that all other bodies, which were potentially within this expression, were local rather than national. Accordingly, I do not consider that there is any separate or convincing argument based on the "local" character of the police.

518. **Issue 29:**

If a "*case [or cases] of COVID-19*" does amount to "an incident likely to endanger human life" as those words are used in Clause S/30/1:

(1) Must it have occurred before the laying before Parliament of the 21 March and/or 26 March Regulations to have causal relevance to the interruption or interference with the Claimants' business caused by those Regulations?

(2) Must the "*policing authority*" have known about the relevant case/s prior to the laying before Parliament of the 21 March and/or 26 March Regulations to have causal relevance to the interruption or interference with the Claimants' business caused by those Regulations?

519. It was ultimately common ground that the answer to question 29 (1) was: **Yes**, and I therefore so answer that question.

520. On Issue 29 (2), Allianz's argument was in summary as follows. Even if the court did not find for Allianz on all aspects of its submissions on the word "incident", a requirement nevertheless remains on the policyholder to identify a specific qualifying "incident", particularly bearing in mind that the insuring clause requires that the interference with the policyholder's business be a "direct" result of the incident. It was

therefore insufficient for the policyholder to be able to identify, retrospectively, cases of Covid-19 in the relevant radius at a certain time. Thus, the specifically identified incident itself must have caused the policing authority to hinder or prevent access or use.

521. Furthermore, if a case was not known at the time, then it could not be an equal and effective cause of the March Regulations, particularly when balancing the causative effectiveness of those unknown cases with the cases which were known. Accordingly, unknown cases could not be causally relevant for the purposes of Clause S/30/1.

522. In my view, the short answer to this line of argument is that it is, in substance, the same as that which was advanced by insurers and rejected in the *London International Exhibition* case: see in particular paragraphs [238] – [240] and my conclusion at [250]. This argument is, therefore, not realistically open at first instance. I therefore answer question 29 (2): **No**.

523. **Issue 30:**

Insofar as they are insureds pursuant to the Policy, are the Claimants entitled to a separate limit of indemnity per premises, or a separate limit of indemnity per insured claimant?

524. This issue arose from the fact that some of the IEH insureds owned more than one theatre or venue which was affected by the March 2020 restrictions. Some of the insureds owned and operated a single premises. For example, the 8th Claimant (Savoy Theatre Holdings Ltd) owned only the Savoy Theatre in London. The insurers accepted that since the policy was composite, Savoy Theatre Holdings Ltd could itself claim up to the £ 500,000 limit provided in Clause S/30/1, and that this limit was not affected by the existence of other insureds with their own £ 500,000 limit.

525. In contrast, and by way of example, the 10th Claimant (The Ambassador Theatre Group (Venues) Ltd), owned and operated 13 theatres in different locations throughout England and Scotland: in Birmingham, Bristol, Edinburgh, Folkestone, Manchester, Liverpool, London, Oxford, Sunderland, Torquay and York. IEH contended that the £ 500,000 limit in Clause S/30/1 applied on a per premises basis. Accordingly, even though each theatre was impacted by the same March 2020 restrictions, there were in effect multiple limits of £ 500,000. This was disputed by Allianz, who contended that the £ 500,000 limit operated on a "per insured" basis. Accordingly, on this basis, The Ambassador Theatre Group (Venues) Ltd would have one £ 500,000 limit applicable to all of the theatres and venues which it owned and operated.

526. A further related point was also debated, albeit that this may not have been precisely covered by Issue 30 as formulated. The parties were agreed, however, that it would be helpful for the court to address this issue. Allianz contended that even if it was wrong on the "per premises" versus "per insured" issue, nevertheless there was a £ 500,000 aggregate limit in Clause S/30/1. This limit was not a "per claim" limit, but should be construed as an aggregate limit for all claims by each insured in the aggregate. This construction was disputed by IEH.

The parties' arguments

527. On behalf of IEH, Mr Gruder's starting point was the common ground that the IEH policy was a composite policy: it therefore insured the interests of a number of different insured persons in one document, and took effect legally by way of separate contracts of insurance between Allianz and each of the individual insured companies. It was also common ground that the £ 500,000 limit was not applicable collectively to all of the numerous insureds which were insured under the composite policy.

528. Mr Gruder submitted that the insured peril under Clause S/30/1 related to different premises. Thus, there would be separate claims in respect of different venues in the situation, for example, where the Manchester Opera House was closed for 2 weeks due to an outbreak of Legionnaire's Disease in Manchester, and 2 months later the New Theatre in Oxford was closed for 2 days due to student protests. The separate incidents would give rise to separate claims, with a separate limit of £ 500,000 for each. He submitted that the position is the same where, for each of the theatres, cases of Covid-19 within the relevant radius were the incidents in consequence of which access to the different theatres were prevented. Each case of Covid-19 would constitute a separate incident. The incident likely to endanger life within one mile of the Manchester Opera House is properly regarded as a different incident from the incident likely to endanger life within one mile of the New Theatre in Oxford. That approach was supported by the analysis of Cockerill J in *Corbin & King* at paragraph [239] – [244]. The language of the present clause is not materially different to the clause considered by Cockerill J.

529. This approach made commercial common sense. It would be bizarre if the same £ 500,000 limit applied to Savoy Theatre Holdings Ltd with one theatre, and the same limit applied collectively to all theatres of The Ambassador Theatre Group (Venues) Ltd. There is nothing in the wording which indicates that the £ 500,000 limit was a "per insured" limit rather than a "per premises" limit.

530. In his oral submissions, Mr Gruder drew attention to other clauses of the policy which included clear aggregating language, but this was absent in the present case.

531. On the related but separate question of whether the £ 500,000 limit was an aggregate limit, Mr Gruder submitted that the policy could not be construed in that way. It could be said that the policy as drafted did not make sense because the words "in the aggregate during any one Period of Insurance" did not add anything to "any one claim". However, it was not permissible as a matter of construction to alter the wording so that it read "any one claim and in the aggregate during any one Period of Insurance". The practical effect of that addition would be to remove the words "any one claim", and to create an aggregate limit which is not expressly contained in the existing clause. The court could not decide that it was clear that this correction ought to be made in order to correct the alleged drafting mistake.

532. On behalf of Allianz, Mr Dougherty submitted that an analysis of Clause S/30/1 and the policy as a whole strongly indicated that the IEH claimants were only entitled to a single limit per insured claimant for a number of reasons.

533. First, there was a single closure by reason of the March regulations, regardless of how many premises a particular insured operated. It is the prevention or hindrance that is the "claim" to which the insurance responds.

534. Secondly, the policy envisages that a single "claim" may include loss affecting one or more insured locations at the same time. Mr Dougherty referred in that regard to the "Property Damage Business Int Excess" clause, S/36/1. This provided for a single excess in circumstances where a claim was made, affecting one or more "Insured Locations" and that arise from or are in connection with the same single occurrence.

535. Thirdly, Mr Dougherty placed considerable emphasis, in his oral submissions, on the fact that Clause S/30/1 responds to any claim resulting from interruption or interference "with the Business". The "Business" was a defined term, and the definition contained a description of the business which was compendious across all of the IEH claimants' business. It was not made by reference to different premises. This suggested that the clause would respond in respect of loss suffered across all premises as a single claim, and not per premises. In his oral submissions, Mr Dougherty referred to various provisions of the policy concerning the computation of loss, and submitted that these concerned each insured's business as a whole, particularly bearing in mind the likelihood that each theatre was not likely to be wholly autonomous: there may, for example, be centralised functions such as issuing or refunding tickets, and these would play into the overall calculation of a business interruption loss.

536. In relation to the related issue of aggregation, Mr Dougherty submitted that the relevant words of Clause S/30/1 must be read as "any one claim and in the aggregate". If it were otherwise, the words "in the aggregate" would be entirely superfluous. Accordingly, each Claimant (each of whom is a separate co-insured) can claim no more than £ 500,000 in any one period of insurance, regardless of the number of premises affected.

Discussion

537. I accept the submissions of IEH, as summarised above, on this issue.

538. The critical wording to be considered is Clause S/30/1. For present purposes, I leave aside (as did the parties when arguing Issue 30 as originally drafted) the question of the effect of the words "in the aggregate", and whether these can be read as "and in the aggregate".

539. Leaving that point aside, the £ 500,000 limit applies "any one claim". In my view, Mr Gruder was correct in his submission that "any one claim" operates on a "per premises" basis. Thus, in the example of closures of different theatres resulting from Legionnaire's Disease in Manchester, and student riots some time later in Oxford, there would very obviously be separate claims. Indeed, Mr Dougherty did not contend otherwise. In that situation, the fact that there would be separate claims is unaffected by the fact that the clause refers earlier to "the Business". One important reason why there are separate claims in that example is because the "incident" within the 1-mile radius, and which results in the prevention of access, is different. The ability to claim for Legionnaire's Disease in Manchester depends upon the ability of the relevant claimant to show an incident "likely to endanger human life or property" within the 1-mile radius of the Manchester Opera House. Similarly, the ability to claim in respect of the Oxford theatre depends upon the ability of the relevant claimant to show an incident within the 1-mile radius of that theatre in Oxford.

540. I agree with Mr Gruder that the position is no different when considering whether there were incidents, within the relevant 1-mile radius, in consequence of which theatres were

closed as a result of the restrictions introduced because of the Covid-19 pandemic. In the light of the decisions of the Divisional Court and the Supreme Court in the *FCA test case*, it cannot be suggested that the pandemic as a whole is an "occurrence" or an "incident". Accordingly, the ability to claim in respect of the closure of each theatre depends upon the ability of the relevant claimant to prove an "incident" within the 1-mile radius of each theatre. Self-evidently, the incident which may permit a claim in Manchester will not be the same incident as that which will permit a claim in Oxford. As Mr Gruder said in his reply submissions: it is necessary to look at the impact of the incident in relation to a one-mile radius of the premises, and in the case of a business which has 13 theatres all over the country, there will be "13 individual one-mile radii of those premises". Accordingly, I do not consider that there is any basis in the clause, because of the reference to "interference with the Business" or otherwise, for in effect treating all of the individual premises as one unit because they are all owned by one insured.

541. This conclusion is supported by a number of further considerations.

542. First, I do not consider that any logical distinction can be drawn between the present clause, and that which was considered by Cockerill J in *Corbin & King*. The clause in that case (see paragraph [14]) provided that the insurers' "liability for any one claim will not exceed the limit shown in your schedule". The relevant limit was £ 250,000. Cockerill J held (see [244]) that Axa was liable to indemnify each of the Claimants "in respect of each of their premises up to a maximum amount of £ 250,000" in respect of each of three closures/ restrictions. (I note in passing that, in the case of IEH, only the March 2020 closure is relevant, because of the expiry of the policy in April).

543. In reaching that conclusion, Cockerill J attached significance (as do I) to the fact that the premises were in different locations and could well be differently affected by a danger triggering cover. She said at [239]:

> "One then moves on to the construction points. Here the most powerful points – and the ones which unequivocally supports the Claimants' position, are the facts that:
>
> i) The Policy refers to cover in respect of "interruption and interference with the business where access to your Premises is restricted …";
>
> ii) The premises were in different locations and could well be differently affected by a danger triggering cover. Mr Gruder's nuclear incident in Central London would leave Café Wolseley at least untouched. Further, as he pointed out, closures from two suspicious vehicles (one near the Delaunay and one near the Wolseley) must be seen on any analysis as two separate incidents which would naturally give rise to two claims; and there is no logical distinction if it is the same car, equidistant from the two venues which closes both premises. The word "premises" points to each restaurant/café and that distinction illuminates how a separation of interests may well operate – and that in turn points to separate limits. That then

> harmonises with the fact of different named insureds and the separate interests which underpin a composite policy."

544. Secondly, I consider that (on Allianz's main argument concerning Issue 30), Allianz is seeking to conjure, in relation to the £ 500,000 limit, aggregating language which is simply not present. In my view, a reasonable reader of the policy as a whole would see that other provisions, but not Clause S/30/1, did contain typical language which provides for aggregation. Thus, in the cover for property damage concerning Contract Works, Clause 40 provides for a £ 250,000 limit "in respect of any one contract in respect of all losses arising out of one occurrence". In the Employers' Liability Section, the "Limit of Indemnity" is "in respect of any one claim or series of claims arising out of one occurrence".

545. Another example of aggregating language is contained in Clause S/36/1, to which the insurers drew attention. This clause is concerned with how an excess, not a policy limit, is to be calculated. I do not consider that any legitimate process of construction would lead to the conclusion that, notwithstanding the absence of any relevant wording, the approach to the calculation of an excess is to be read across so as to apply to a policy limit. The more significant point is that there is no aggregating language, similar to that contained in Clause S/36/1, which the parties used in connection with the limit provided for in Clause S/30/1.

546. Thirdly, there is nothing in the language of Clause S/30/1 which indicates that the limit operates on a per-insured basis.

547. I did not consider that any of the points made by Mr Dougherty negated the conclusion which I have reached.

548. Mr Dougherty referred to the decision of Butcher J in *Stonegate*. However, the relevant provisions in that case were very different to the clause with which I am concerned. In particular, there was a defined term, Single Business Interruption Loss: see paragraph [18]. This clause, which contains aggregating language, is not present in the present case, but it was clearly material to Butcher J's conclusions, including at paragraph [180] to which Mr Dougherty referred.

549. Nor, as already indicated, do I consider that any significance is to be attached to the word "the Business" in Clause S/30/1. As Mr Gruder submitted, this was a reference to the "Business Description" in the amended policy schedule. This gave a generic description of the nature of the IEH claimants' businesses. In my view, this is of no real significance when construing an insured peril which, for reasons already given, operates by reference to incidents within a specified radius of various different premises. In my view, the reference to the "Business", and indeed various other provisions to which Mr Dougherty referred in his submissions, cannot supply the aggregating language which Allianz's submissions require, but which is absent from the policy wording.

550. Accordingly, the answer to Issue 30 is as follows: **Insofar as they are insureds pursuant to the Policy, the Claimants are entitled to a separate limit of indemnity per premises, rather than a separate limit of indemnity per insured claimant.**

551. This leaves for consideration the additional issue which was addressed by the parties, namely whether there is in any event an aggregate limit of £ 500,000 because of the

wording of Clause S/30/1 and the reference to "any one claim in the aggregate during any one Period of Insurance".

552. It was common ground that a clear mistake in the drafting of a document may be corrected as a matter of construction, if it can be established that something has gone wrong with the language: see *Palladian Partners LP and others v The Republic of Argentina and anr* [2023] EWHC 711 (Comm) (Picken J), paras [144] – [151]. The relevant principle, quoted in *Palladian* at para [145] was stated by Brightman LJ in *East v Pantiles (Plant Hire) Ltd* [1982] 1 WLUK 562 to be as follows:

> "In fact, the principle is of older vintage since, as Ms Prevezer KC pointed out, it was addressed by Brightman LJ (as he then was) in East v Pantiles (Plant Hire) Ltd: [1982] 1 WLUK 562, as follows:
>
> "Two conditions must be satisfied: first there must be a clear mistake on the face of the instrument; secondly it must be clear what correction ought to be made in order to cure the mistake. If those conditions are satisfied, then the correction is made as a matter of construction. If they are not satisfied then either the claimant must pursue an action for rectification or he must leave it to a court of construction to reach what answer it can on the basis that the uncorrected wording represents the manner in which the parties decided to express their intention.""

553. Accordingly, as Picken J said in *Palladian* at [151]: even if the court were to conclude that the plain words of a provision could not reflect what the parties intended, it cannot correct by construction unless there is only one clear answer.

554. Mr Gruder was inclined to accept that there had been a clear mistake on the face of Clause S/30/1. This was essentially because if the £ 500,000 limit was "any one claim", then no real meaning could be ascribed to the further words "in the aggregate during any one Period of Insurance". I am not persuaded, however, that this means that there was a clear mistake. It is very common for commercial contracts to contain unnecessary and superfluous words. As Lord Hoffmann said in *Beaufort Development (NI) Ltd v Gilbert Ash* [1996] 1 AC 266, 274:

> "… the argument from redundancy is seldom an entirely secure one. The fact is that even in legal documents (or, some might say, especially in legal documents) people often use superfluous words".

555. Even if I were to assume, however, that the drafting contains a clear mistake, I could not correct this alleged mistake unless there was only one clear answer. In the present case, the alternatives would be either (i) to ignore, and thus notionally strike out, the words "in the aggregate during any one Period of Insurance", or (ii) to ignore and thus notionally strike out the words "for any one claim". The latter would in substance be the effect of the addition proposed by Allianz. This is because if the clause is to be read as creating a £ 500,000 limit "any one claim and in the aggregate", the only relevant limit would be the aggregate limit. I see no basis upon which I can say that, as between these two alternatives, it is clear that the correction favoured by Allianz should be made.

556. This conclusion is reinforced by the following consideration. The addition of the word "and", which is favoured by Allianz, does not remove superfluity from the clause. Rather, it has the effect of maintaining superfluous words in the clause, but accomplishing a switch in the words which are superfluous. Under the clause as drafted, the relevant superfluous words are "in the aggregate during any one Period of Insurance". Under the clause as redrafted, the superfluous words are "any one claim". The latter result is, obviously, far more favourable to Allianz. However, as previously indicated, I cannot say that it is clear that this correction ought to be made in order to correct the (alleged) mistake.

557. Accordingly, having addressed this additional issue (or at least different way of putting the case), the answer to Issue 30 remains as stated above.

H: Answers to the preliminary issues

558. This section contains my answers to the various preliminary issues in the light of the reasons set out in the earlier sections of this judgment. The preliminary issues are numbered in the order in which they appear in the order made at the CMC on 28 July 2023. Ordinary text sets out the preliminary issue, and my answer is in bold text. The following includes issues where the answers were determined before trial.

A1. TRIGGER AND CAUSATION

Gatwick, Fuller, Starboard and Hollywood Bowl

1. Did, as the Claimants contend, the alleged interferences with each of the Claimants' businesses arise in consequence of "*action by the Police or any other Statutory Authority*" which prevented or hindered use of the Premises or access thereto or, interference with the Business carried out by the Claimants or, as Liberty Mutual Insurance Europe SE contends, were the Regulations relied upon the Claimants instead laws made by central government via Orders in Council or by the Secretary of State which did not constitute "*action by the Police or any other Statutory Authority*"?

   The interferences with the businesses of the Gatwick Claimants, Hollywood Bowl, Fullers, and the Starboard Claimants (as pleaded in the Particulars of Claim) arose in consequence of "action by the Police or other Statutory Authority" which prevented or hindered use of the Premises or access thereto.

2. Is there cover under the Prevention of Access (Non Damage) cover in the Policy where, as the Claimants contend:

   (1) The "danger" referred to in the Prevention of Access (Non Damage) clause was the presence of COVID-19 at or within a 1 mile radius of each of the Claimants' premises; and

   (2) This "danger", combined with other cases of COVID-19 elsewhere in the UK, was of equal causal potency and a separate concurrent cause of the passing of the Regulations which led to the restriction of access to each of the Claimants' premises and the consequent business interpretation claims?]

   Yes.

3. Or, as [Liberty Mutual] contends:

   (1) Does the Prevention of Access (Non Damage) cover in the Policy only provide a narrow localised form of cover for a local danger within one mile of each Claimant's premises rather than providing cover in respect of measures introduced to deal with a national pandemic or a continuing countrywide state of affairs; and

   (2) Does the Prevention of Access (Non Damage) cover only provide cover where the Claimants can prove that it was the individual cases or threatened cases of COVID-19 within a 1 mile radius of the Claimants' premises rather than the national COVID-19 pandemic which led to the Regulations?

No.

Hollywood Bowl

4. In relation to the Claimants' premises, did the 4 July Regulations (or the equivalent Regulations in Scotland and Wales) introduce new restrictions which came into force on the date the Regulations came into force i.e., 4 July 2020 in England, 13 July 2020 in Wales, and 15 July 2020 in Scotland and which continued throughout the "*emergency period"?*

No.

5. Or, as the Defendant contends, was the practical effect of the Regulation introduced on 4 July 2020 that the Claimant's premises (previously closed by the 26 March Regulations) remained closed for the "*emergency period*"?

Yes

Liberty Retail

6. Were the pleaded actions taken by a Statutory Authority or Police within the meaning of the PoA Extension (as defined in the Particulars of Claim)?

Yes – the pleaded actions were taken by a Statutory Authority within the meaning of the PoA Extension (as defined in the Particulars of Claim).

7. Can past, present and/or future cases of COVID-19 within the one mile radius of the Premises (Radius Cases) constitute a danger or disturbance within the meaning of the PoA Extension?

Yes, as to past and present cases.

8. Are Radius Cases a proximate cause of the pleaded interruptions or interferences?

Yes.

A2. LIMITS

Gatwick

9. Is the Defendant bound to indemnify each Claimant in respect of each of the Claimants' premises up to a maximum amount of £ 1,000,000 with an Indemnity Period of 6 months in respect of each separate interference with the Claimants' businesses particularised in paragraph 38(1) to 38(5) of the Re-Re-Amended Particulars of Claim?

10. Or, as the Defendant contends, is the express Limit of Indemnity of £ 1,000,000 applicable to each of the premises?

The Defendant is bound to indemnify each Claimant in respect of each of the Claimants' premises up to a maximum amount of £ 1,000,000 with an Indemnity Period of 6 months on the basis set out in the definition of "Limit of Indemnity"; i.e. £ 1,000,000 for any loss or series of losses arising from any one occurrence.

Issues as to the number of relevant occurrences are reserved for later determination.

Gatwick, Fuller, Hollywood Bowl and Starboard

11. Is the reference to "LIMIT" in the Schedule to the Contract of Insurance a reference to, or does it mean, the defined term "LIMIT OF INDEMNITY"?

Yes.

12. In *Fuller*, is the Claimant entitled to an indemnity with a Limit of £ 1,000,000 with an Indemnity Period of 3 months in respect of each prevention or hindrance of access or use in respect of, or interference with the business carried on in each of the Claimant's premises.

No: the Claimant is entitled to an indemnity with a Limit of £ 1,000,000 with an Indemnity Period of 3 months in respect of any loss or series of losses arising from any one occurrence.

13. In *Starboard*, does the Limit of £1,000,000 with an Indemnity Period of 3 months apply:

(1) Separately in respect of each individual contract between each Claimant and the Defendant, as the said policy was a composite policy (which is common ground) and, accordingly contained distinct and separate contracts of insurance between the Defendant and each Claimant; and/or

Yes.

(2) Separately each time the use of each Hotel and/or or access thereto was prevented or hindered in consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises; and/or

(3) Separately in respect of each of the interferences with the Claimants' businesses particularised in paragraph 38(1) and (2) of the Particulars of Claim?

The Limit of £ 1,000,000 applies in respect of "any loss or series of losses arising from any one occurrence". The question of how many occurrences there were is reserved for later determination.

14. Or, as [Liberty Mutual] contends in *Fuller* and *Starboard*, is any indemnity capped at £ 1,000,000 as an aggregate limit or overall cap on coverage for Prevention of access (Non Damage) during the period of insurance?

No. In *Fuller,* where there is a single Insured, indemnity is capped at £ 1,000,000 in accordance with the terms of the Limit of Indemnity provision of the policy: i.e. "for any loss or series of losses arising from any one occurrence".

15. Or, as [Aviva] contends in *Fuller*:

(1) Is any indemnity capped at £ 1,000,000 as an aggregate limit or overall cap on coverage for Prevention of access (Non Damage) during the period of insurance? Or alternatively;

No.

(2) Is the Claimant entitled to recover up to £ 1,000,000 in respect of any loss or series of losses arising from any one occurrence.

Yes.

15A. In Fuller, if the proper construction of the Contract of Insurance is as set out in paragraph 15 (2) above:

(1) How many occurrences occurred during the policy period and what were these?

The parties agreed that this issue should not be decided at the present time.

16. In *Fuller, Hollywood* and *Starboard*, on the assumption that the independent trading results of each of the Claimant's premises are ascertainable:

(1) Is each of the Claimant's premises a separate "department" for the purpose of the Departmental clause at page 35 of the Policy?

No.

(2) And if the answer to (1) above is yes, what (if any) effect does that have on the limits available to the Claimants?

Not applicable; but even if the answer to (1) were "yes", this would not affect the limits available to the Claimants.

Hollywood Bowl

17. Is the Claimant entitled to an indemnity with a Limit of £500,000 with an Indemnity Period of 3 months in respect of each individual claim in respect of a particular prevention or hindrance of access or use in respect of, or the interference with the business carried on in, each of the Claimant's premises?

No.

18. Or, as the Defendant contends, is any indemnity capped at £500,000 per "*action by the Police or other Statutory Authority*" which led to a prevention or hindrance of access to the Claimant's premises, with all losses or series of losses arising from that action being aggregated?

The indemnity is capped at £ 500,000 for any loss or series of losses arising from any one occurrence.

Liberty Retail

19. Is the limit for the PoA Extension (i) per Business Unit where applicable, alternatively (where not applicable), per relevant Claimant; and in any event (ii) per materially different action taken by a Statutory Authority or Police?

The limit of £ 750,000 in the POA extension is applicable per relevant Claimant. There is a limit of £ 750,000 for any loss or series of losses arising from any one occurrence. This limit is not an annual aggregate limit per Claimant nor for all the Claimants collectively.

20. Is the AICW sub-limit of indemnity available separately and in addition to the sub-limit that is available for the PoA Extension?

No.

21. Can the Claimants claim for Claim Preparation Costs and, if so, what limit applies to that claim?

Yes: the Claimants claim for Claim Preparation Costs. There is no limit applicable to that claim.

Bath Racecourse

21A. Does the limit for the Denial of Access Cover apply (a) per premises; (b) alternatively, per Claimant; (c) in any event, per materially different action taken by the Government or any other competent authority?

There is a limit of £ 2.5 million under the Denial of Access cover. Each Claimant is entitled to claim up to the limit of £ 2.5 million for any one loss. All issues as to the number of losses are reserved for later determination.

21B. Are the limits for the cover for Additional Increased Costs of Working and Claims Preparation Cover available on the same basis as per Issue 21A above?

The Claims Preparation Clause provides cover additional to the DOA limit of £ 2.5 million. The cover is limited to £ 50,000 in respect of any one claim or series of claims arising from a single occurrence. The limit is not an aggregate limit applicable to the insureds collectively. Each claimant is entitled to claim up to the limit.

The AICW clause does not provide cover additional to the DOA limit of £ 2.5 million and a maximum indemnity period of 3 months.

A3. FURLOUGH

Gatwick, Starboard* and *Hollywood Bowl

22. Are the Claimants obliged to account to the Defendant for any grants received as a result of the Coronavirus Job Retention Scheme?

Yes.

Liberty Retail* and *Bath Racecourse

23. Should credit be given by the Claimants for any payments received as a result of the Coronavirus Jobs Retention Scheme?

Yes.

(Issue 24 – 27 concerned Pizza Express, but did not require use in trial following settlement of that case.)

C. ALLIANZ WORDING

IEH

C1. TRIGGER AND CAUSATION

28. What is the proper construction of Clause S/30/1. In Particular:

(1) Does a "*case [or cases] of COVID-19*" amount to an "*incident likely to endanger human life"* within the meaning of Clause S/30/1?

A "case [or cases] of COVID-19" does not, in and of itself/ themselves, amount to an "incident likely to endanger human life" within the meaning of Clause S/30/1. Although a case or cases of COVID-19 is/are "likely to endanger human life" within the meaning of the clause, it/they does not in and of itself/ themselves amount to an "incident".

(2) If a "*case [or cases] of COVID-19*" does amount to "*an incident likely to endanger life*" as those words are used in Clause S/30/1, can "*threatened*" or "*anticipated*" case(s) of COVID-19 also amount to "*an incident*"?

No.

(3) If a "*case [or cases] of COVID-19*" does amount to "*an incident likely to endanger life*" as those words are used in Clause S/30/1, does the wording of Clause S/30/1 require any such case (or cases) to have occurred within a 1 mile radius of the premises, or can the case (or cases) occur outside of the 1 mile radius, provided it is likely to endanger human life at any of the Claimants' premises, or within 1 mile of the Claimants' premises?

A case must have occurred within 1 mile of the premises.

(4) What do the words "*by any policing authority*" in Clause S/30/1 refer to? Do they, for the purposes of the present case, refer to and/or include only the police, or also the UK Government, or do they refer to and/or include something else?

Clause S/30/1 refers to the police or other bodies whose function is to ensure that the law is obeyed and enforced. It does not extend to central government or the Secretary of State for Health and Social Care.

(5) Does Clause S/30/1 require the prevention or hindrance of access or use to be "*by any policing authority*" or is it sufficient that the prevention or hindrance is by

another authority whose actions might ultimately be enforceable or enforced by the police?

Clause S/30/1 does require the prevention or hindrance of access or use to be "by any policing authority". It is therefore not sufficient that the prevention or hindrance is by another authority whose actions might ultimately be enforceable or enforced by the police.

(6) Is Clause S/30/1 on its true construction intended to provide cover for prevention or hindrance of access or use by a policing authority in consequence of case/s of Covid-19 within a 1 mile radius of the premises, where there is a pandemic and most such cases in fact occur outside the 1 mile radius?

No.

29. If a "*case [or cases] of COVID-19*" does amount to "an incident likely to endanger human life" as those words are used in Clause S/30/1:

(1) Must it have occurred before the laying before Parliament of the 21 March and/or 26 March Regulations to have causal relevance to the interruption or interference with the Claimants' business caused by those Regulations?

Yes.

(2) Must the "*policing authority*" have known about the relevant case/s prior to the laying before Parliament of the 21 March and/or 26 March Regulations to have causal relevance to the interruption or interference with the Claimants' business caused by those Regulations?

No.

C2. LIMITS

30. Insofar as they are insureds pursuant to the Policy, are the Claimants entitled to a separate limit of indemnity per premises, or a separate limit of indemnity per insured claimant?

Insofar as they are insureds pursuant to the Policy, the Claimants are entitled to a separate limit of indemnity per premises, rather than a separate limit of indemnity per insured claimant.

SCHEDULE

(1) GATWICK

COMMERCIAL COMBINED POLICY

Insured:	Gatwick Investment Ltd t/a Crowne Plaza London Gatwick Airport		
Address:	Langley Drive Crawley RH11 7SX UK		
The Business;	Hoteliers		
Period Of Insurance:	a)	From	8th October 2019
		To	7th October 2019
		Both days inclusive	
	b)	Any subsequent period for which the Insured shall pay and the Insurer shall agree to accept the Renewal Premium	

SECTION 1 – MATERIAL DAMAGE

The Property Insured

Item No	Description	Declared Values GBP	Limit of Indemnity GBP
1	Buildings	41,000,000	51,250,000

Inner Limits of Liability

Inner No	Limit Description	Limit of Indemnity GBP
1	Directors' Employees Visitors Personal Effects	500 any one person
2	Employee Tools	500 of any one employee
3	Computer Systems Records	10,000 any one occurrence

SECTION 2 – BUSINESS INTERRUPTION

BASIS OF COVER

Description		Declared Values GBP	Limit of Indemnity GBP	Maximum Indemnity Period (months)
1	Gross Profit including Increased Costs of Working – Declaration Linked Basis	Not Insured		

2	Gross Revenue including Increased Costs of Working – Declaration Linked Basis	26,500,000	35,332,450	36
3	Rent Receivable	Not Insured		
4	Additional Increase in Cost of Working		100,000	12
5	Outstanding Debt Balances / Books Debts		250,000	
6	Fines & Damages		Not Insured	
7	Research Establishment Expenditure		Not Insured	
Total Business Interruption		26,500,000	35,682,450	

BUSINESS INTERRUPTION EXTENSIONS

Description		Limit GBP	Maximum Indemnity Period (months)
1	Specified Suppliers	Not Insured	
2	Unspecified Suppliers	250,000	12
3	Prevention of Access	1,000,000	6
4	Public Utilities	500,000	3
5	Specified Customers	Not Insured	
6	Unspecified Customers	100,000	12
7	Contract Sites	100,000	3
8	Transit	100,000	3
9	Property Stored	100,000	3
10	Group Interdependency	250,000	3
11	Professional Insured - Documents	Not Insured	
12	Failure of Utilities	500,000	3
13	Infectious Diseases	Not Insured	
14	Infectious Diseases (including Food Safety Act 1990)	250,000	3
15	Prevention of Access (Non Damage)	1,000,000	6
16	Loss of Attraction	500,000	12

Section 2 Deductible GBP 250.00 combined with Section 1

SPECIFIED WORKING EXPENSES

Carriage Packing and Freight

Purchases (less discounts received)

Bad Debts

SECTION 4 – MONEY INSURANCE

Item No	Description	Limit of Indemnity GBP
A	Any single loss of Money other than crossed cheques, crossed dividend warrants, crossed postal and money orders, crossed bankers drafts, stamped National Saving certificates, premium bonds, savings bonds, credit card sales vouchers, VAT purchase invoices, consumer redemption vouchers, company sales	10,000

vouchers, and unused franking machine units except as stated below:

PERSONAL ACCIDENT ASSAULT EXTENSION

Item No	Benefits	Limit of Indemnity GBP
1	Death	20,000

SECTION 5 – COMPUTER EQUIPMENT ALL RISKS

THE PROPERTY INSURED

Item No	Description	Declared Values GBP	Limit of Indemnity GBP
1	Fixed Computer Equipment		125,000
2	Portable Computer Equipment – Anywhere in the World		5,000
	Total Sum Insured		

EXTENSIONS

Description	Limit of Indemnity GBP	Maximum Indemnity Period (Months)
Accidental Discharge of Gas Flooding Systems	10,000	

SECTION 7 – EMPLOYERS' LIABILITY SECTION

Limit of Indemnity GBP	
GBP 10,000,000	any one Event
GBP 5,000,000	Terrorism Sub-Limit any one Event
GBP 5,000,000	Offshore Sub-Limit any one Event

SECTION 8 & 9 – PUBLIC/PRODUCTS LIABILITY

Limit of Indemnity		
Section 8	GBP 15,000,000	any one Event
Section 9	GBP 15,000,000	any one Event and in the aggregate for the Period of Insurance
	GBP 500,000	Data Protection Sub-Limit in the aggregate for the Period of Insurance

COMMERCIAL COMBINED POLICY

GUIDE TO THIS POLICY – SECTIONS 1-9

The Policy has separate sections for the different types of cover you have purchased. In each section is an insuring clause which, with any Extensions, set out the initial scope of cover. Then there are Exceptions, which exclude certain elements of that cover. Finally there are Conditions, which contain important provisions which you should comply with in order to avoid potential problems.

INDEMNITY AGREEMENT – SECTIONS 1-9

Liberty Mutual Insurance Europe SE (hereinafter referred to as the Company) in consideration of the Insured having paid or agreed to pay the premium will, subject to the terms, Exceptions, Conditions, Endorsements, applicable Limits of Indemnity, Inner Limits of Indemnity (as shown in the Schedule) and Deductible(s) or Self-Insured Retention(s) of this Policy, indemnify the Insured against all sums that the Insured shall become legally liable to pay as stated in any operative Section of this Policy, which arises in connection with the Business.

DEFINITIONS – SECTIONS 1-9

Indemnity Period shall mean:

(a) for all purposes apart from in connection with the Infectious Diseases Extension to Section 2, the period beginning with the occurrence of an Incident
(b) for the purposes of the Infectious Diseases Extension to Section 2, the period beginning with the date from which the restrictions on the Premises are applied

and ending not later than the Maximum Indemnity Period thereafter during which the results of the Business are affected as a result of such Incident or restriction.

Limit of Indemnity shall mean:

(a) for the purposes of Sections 1 to 6, the total liability of the Company for all amounts payable in accordance with the Insuring Clause under these Sections for any loss or series of losses arising from any one occurrence as stated in the Schedule. For the avoidance of doubt the Limit of Indemnity is inclusive of the relevant Deductible stated in the Schedule.
(b) for the purposes of Sections 7 to 9, the total liability of the Company for all amounts payable in accordance with the Insuring Clauses under these Sections, and shall not exceed the amount(s) stated in The Schedule. For the avoidance of doubt, for the purposes of Sections 7 to 9, the Limit of Indemnity is in addition to the relevant Self-Insured Retention stated in the Schedule.

Turnover shall mean the money paid or payable to the Insured for goods sold and delivered and for services rendered in the course of the Business at the Premises.

SECTION 1 – MATERIAL DAMAGE

INSURING CLAUSE

This Section shall cover, in accordance with the Indemnity Agreement, Damage to any of the Property Insured for which a Limit of Indemnity or Inner Limit of Indemnity is stated in the Schedule. The Company will pay to the Insured the values of such property at the time of the Damage or the amount of the Damage or at the Company's option reinstate or replace such Property Insured or any part thereof.

Provided that the liability of the Company during any Period of Insurance shall in no case exceed, in respect of each Item, the relevant Inner Limit of Indemnity in the Schedule or in the aggregate any aggregate Limit of Indemnity in the Schedule.

SECTION 2 – BUSINESS INTERRUPTION

INSURING CLAUSE

In the event that any Building or other property, used in connection with the Business, has suffered Damage and as a result the Business carried on by the Insured is interrupted or interfered with, the Company will pay to the Insured in respect of each Item as stated in the Schedule the amount of loss resulting from such interruption or interference as calculated in accordance with the Basis of Cover Applicable to Section 2.

Provided that:

1. at the time of the Damage, there shall be in force an insurance covering the Premises against such Damage and:

    a) payment has been made or liability shall have been admitted; or,

    b) liability would have been admitted but for the operation of a proviso in such insurance excluding liability for losses below a specified amount.

2. the liability of the Company under this Section shall not exceed:

    (a) the aggregate Limit of Indemnity as stated in the Schedule;

    (b) the relevant Limit of Indemnity remaining after deduction for any other interruption or interference occurring during the Period of Insurance, unless the Company shall have agreed to reinstate the Limit of Indemnity.

BASIS OF COVER APPLICABLE TO SECTION 2

1. Gross Profit including Increase in Cost of Working – Declaration Linked Basis

Cover under this Item is limited to loss of Gross Profit due to reduction in Turnover and increase in cost of working and the amount payable shall be calculated as follows:

(a) in respect of reduction in Turnover, the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall, as a result of the Incident, fall short of the Standard Turnover;

Rate of Gross Profit and Standard Turnover shall be adjusted as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business, either before or after the Incident, which would have affected the Business had the Incident not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Incident would have been obtained during the relative period after the Incident;

(b) in respect of the increase in cost of working, the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover that, but for that expenditure, would have taken place during the Indemnity Period as a result of the Incident, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided, subject to the Uninsured Standing Charges Condition;

less any sums saved during the Indemnity Period in respect of the charges and expenses of the Business payable out of Gross Profit that are not incurred or are reduced as a result of the Incident.

The liability of the Company shall not exceed in respect of Gross Profit 133.33% of the Declared Value stated in the Schedule nor in the whole the sum of 133.33% of the Declared Value for Gross Profit and 100% of the Limit of Indemnity by other Items.

2. Additional Increase in Cost of Working

Cover under this Item is limited to such further additional expenditure beyond that recoverable under clause (b) of Item No 1 on Gross Profit as the Insured shall necessarily and reasonably incur during the Indemnity Period as a result of the Incident for the purpose of avoiding or diminishing the reduction in Turnover.

EXTENSIONS APPLICABLE TO SECTION 2

1. Loss following Damage to property and not otherwise excluded

Loss resulting from interruption of or interference with the Business in consequence of Damage to property as specified below and occurring within the Geographical Limits shall not exceed:

(i) the percentage of the total of the Limits of Indemnity or 133.33% of the Estimated Gross Profit;

or,

(ii) the Limit of Indemnity and Maximum Indemnity Period shown in the Schedule.

(a) **Specified Suppliers**

Property of the supplier(s) detailed in the Schedule.

(b) **Unspecified Suppliers**

Property of any other of the Insured's direct suppliers, manufacturers, or processors of components, goods, or materials, but excluding the property of any supplier of electricity, gas, or telecommunications services, and premises not occupied by the Insured where Property Insured is stored.

…

(j) **Group Interdependency**

Property of any member, subsidiary, or associated company of the Insured shall be deemed to be loss resulting from Damage to Property Insured used by the Insured at the Premises to the extent to which that member, subsidiary, or associated company has been declared to, and accepted by, the Company

2. Infectious Diseases

This Extension shall only apply in respect of the Premises:

Loss resulting from interruption of or interference with the Business in consequence of:

(a) (i) any occurrence of a Notifiable Disease at the Premises or attributable to food or drink supplied from the Premises; or

(ii) any discovery of an organism at the Premises likely to result in a Notifiable Disease;

(b) the discovery of vermin or pests at the Premises;

(c) any accident causing defects in the drains or other sanitary arrangements at the Premises which causes restrictions on the use of the Premises on the order or advice of the competent local authority;

(d) any occurrence of murder or suicide at the Premises;

including the costs and expenses necessarily incurred with the consent of the Company in:

(i) cleaning and decontamination of Property Insured used by the Insured for the purpose of the Business, other than Stock;

(ii) removal and disposal of contaminated Stock;

at or from the Premises the use of which has been restricted on the order or advice of the competent local authority solely as a result of the Incident.

Proviso 1 in the Insuring clause to Section 2 shall not apply to the above Extensions.

EXTENSIONS TO SECTIONS 7, 8 AND/OR 9

7. Data Protection

This Extension is written on a 'CLAIMS MADE' basis and only covers Events that occur after the Retroactive Date

and

in respect of which a claim is both first made against the Insured and notified to the Company during the Period of Insurance.

Irrespective of the number of parties and/or entities entitled to indemnity under this Extension or the number of claimants, the liability of the Company for all amounts payable under this Extension shall not exceed the Sub-limit stated in The Schedule.

CONDITIONS APPLICABLE TO PROPERTY SECTIONS 1 TO 6

13. Automatic Reinstatement

In the absence of written notice by the Company or the Insured to the contrary the insurance by Sections 1, 2 and 5 shall not be reduced by the amount of any loss and in consideration the Insured shall pay the appropriate extra premium on the amount of the loss from the date thereof to the date of the expiry of the Period of Insurance. This shall not apply to losses that are covered under Section 3.

20. Departmental

In respect of Section 2 if the Business be conducted in departments the independent trading results for which are ascertainable the provisions of clauses (a) and (b) of Item 1. Gross Profit including Increase in Costs of Working – Declaration Linked Basis shall apply separately to each department affected by the Incident except that if the Declared Value by the said Item be less than the aggregate of the sums produced by applying the Rate of Gross Profit for each department of the business (whether affected by the Incident or not) to its relative annual Turnover (or to a proportionately increased multiple thereof where the Maximum Indemnity Period exceeds twelve months) the amount payable shall be proportionately reduced.

ENDORSEMENT 11[1]

GROSS REVENUE INCLUDING INCREASE IN COST OF WORKING - DECLARATION LINKED BASIS

Under Business Interruption the insurance under this item is limited to a) Loss of Gross Revenue and b) Increase In Cost of Working and the amount payable as indemnity thereunder shall be:

a) In respect of Loss of Gross Revenue the amount by which the Gross Revenue during the Indemnity Period shall fall short of the Standard Gross Revenue in consequence of the Incident;
b) In respect of Increase In Cost of Working the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Gross Revenue which but for that expenditure would have taken place during the Indemnity Period in consequence of the Incident but not exceeding the amount of reduction in Gross Revenue thereby avoided;

less any sum saved during the Indemnity Period in respect of such of the charges of the Business payable out of Gross Revenue as may cease or be reduced in consequence of the incident.

Notwithstanding anything herein contained to the contrary the liability of the Company shall in no case exceed: in respect of Gross Revenue 133.33% of the Estimated Gross Revenue stated herein; in respect of each other Item 100% of the Sum Insured; or in the whole the sum of 133.33% of the Estimated Gross Revenue and 100% of the Sums Insured by other Items.

INFECTIOUS DISEASES (INCLUDING FOOD SAFETY ACT 1990)

Under Extension Applicable to Business Interruption, 2. Infectious Diseases is extended to include:

'Food Safety Act 1990 Compensation Costs'

The amount payable under this extension shall be the sale value of all products of the Insured which cannot be produced or sold in consequence of the enforcement action, less:

i) any sum saved in respect of such of the charges and expenses of the Business as may cease or be reduced in consequence of the enforcement action; and less
ii) any sum payable to the Insured as compensation under the terms of the Food Safety Act or otherwise.

Notwithstanding the above the insurance by this clause extends to include costs and expenses necessarily incurred with the consent of the Company in the:

i) cleaning and decontamination of property used by the Insured for the purpose of the Business (other than stock in trade); and
ii) removal and disposal of contaminated stock in trade;

[1]The endorsements are listed, with numbers, at the end of the policy Schedule. The endorsements themselves are unnumbered, and do not appear in the same sequence in the Policy document in the hearing bundle

at or from the Premises, the use of which has been restricted on the order or advice of the competent local authority solely in consequence of the Incident.

The Company's limit of liability shall not exceed the limit stated in the Schedule.

ENDORSEMENT 10

LOSS OF ATTRACTION

Under Business Interruption Cover provided by this Policy is extended to include loss resulting from interruption to or interference with the Business in consequence of Damage to property in the vicinity of the Premises which shall cause loss of custom to the Insured directly due to loss of amenities in the vicinity if the Premises of the property of the Insured therein shall be damaged or not.

Under this extension vicinity is defined as no more than 1 mile radius from the Premises.

Provided that this extension shall be limited to the amount stated in the Schedule for any one occurrence.

Subject to the terms, Conditions, limits and Exceptions of this Policy

ENDORSEMENT 7

LOSS OF LICENCE

In the event of the forfeiture, suspension or withdrawal of the Licence in force in respect of the Premises the Company will pay to the Insured:

EXCLUSIONS

The Company shall not be liable for loss arising from:

…

7 Any amount exceeding the Limit of Indemnity shown in the Schedule.

ENDORSEMENT 6

DETERIORATION OF STOCK

In respect of Endorsement 1 Deterioration of Stock the Warranty is deleted and replaced by Condition 3 as follows:

3. It shall be a condition precedent to liability that the Insured shall carry out in-house maintenance quarterly to maintain and adjust the Machinery/Plant

Subject to the terms, Conditions, limits and Exceptions of this Policy

ENDORSEMENT

LOSS OF ATTRACTION EXTENSION AMENDMENT

…

Provided that this extension shall be limited to the amount stated in the Schedule for any one occurrence.

ENDORSEMENT 8

PREVENTION OF ACCESS (NON DAMAGE)

Under Business Interruption loss following interference with the Business carried out by the Insured in consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises which shall prevent or hinder use of the Premises or access thereto or, interference with the Business carried out by the Insured.

Provided that the Company shall not be liable under this extension for more than the amount shown against this extension in the Schedule.

Subject to the terms, Conditions, limits and Exceptions of this Policy

(2) STARBOARD

COMMERCIAL COMBINED SCHEDULE

Insured:	Starboard Hotels Ltd & Associated Companies		
Address:	Park House 10 Penn Road Beaconsfield HP9 2LH UK		
The Business;	Hoteliers		
Period Of Insurance:	a)	From	1st July 2019
		To	30th June 2020
		Both days inclusive	
	b)	Any subsequent period for which the Insured shall pay and the Insurer shall agree to accept the Renewal Premium	

THE SCHEDULE

The Premises

No	Address
1	Holiday Inn Derby Riverlights, Morledge, Derby, DE1 2AY, DE1 2AY, UK
2	ibis Birmingham Bordersley, 1 Bordersley Park Road, Birmingham, B10 0PD, B10 0PD, UK
3	ibis Plymouth, Longbridge Road, Marsh Mills, Plymouth, PL6 8LD, PL6 8LD, UK
4	ibis London Gatwick, London Road, Lowfield Heath, Crawley, RH10 9GY, RH10 9GY, UK
5	ibis Leicester City, Constitution Hill, Leicester, LE1 1PL, LE1 1PL, UK
6	ibis Sheffield City, Shude Hill, Sheffield, S1 2AR, S1 2AR, UK
7	ibis Crewe, 1 Emperor Way, Crewe, CW1 6BD, CW1 6BD, UK
8	ibis Haydock, 4 Galway Crescent, Haydock, St. Helens, WA11 0GR, WA11 0GR, UK
9	ibis Birmingham NEC, Bickenhill Lane, Birmingham, B40 1PQ, B40 1PQ, UK
10	ibis Barnsley, Whinby Road, Dodworth, Barnsley, S75 3TX, S75 3TX, UK
11	Holiday Inn Express Greenock, Main Street, Greenock, PA15 1AG, PA15 1AG, UK
12	Holiday Inn Express Leeds Armouries, Armouries Drive, Leeds, LS10 1LE, LS10 1LE, UK
13	Holiday Inn Express Ramsgate, Tothill St Minster, Minster, Ramsgate, CT12 4AU, CT12 4AU, UK
14	Holiday Inn Express Tamworth, River Drive, Tamworth, B79 7ND, B79 7ND, UK
15	Holiday Inn Express Burnley, 55 Pendle Way, Burnley, BB12 0TJ, BB12 0TJ, UK
16	Days Inn Wetherby, Junction 46, A1 (M), Kirk Deighton, Wetherby, LS22 5GT, UK
17	Best Western Plus Epping Forest, 30 Oak Hill, Woodford Green, IG8 9NY, IG8 9NY, UK
18	Cliffden Hotel, 20 Dawlish Road, Teignmouth, TQ14 8TE, TQ14 8TE, UK
19	Best Western Blackpool, 282-286 Promenade, Blackpool, FY1 2EZ, FY1 2EZ, UK
20	Windermere Manor, Ambleside Road, Windermere, LA23 1ES, LA23 1ES, UK
21	Park Royal, Western Avenue, London, W3 3BQ, W3 3BQ, UK
22	Cambourne, HP9 2LH, UK
23	Head Office, 10 Penn Road, Beaconsfield, HP9 2LH, HP9 2LH, UK
24	Chorley Office, Arundel House, Foxhole Road, Chorley, PR7 1NY, PR7 1NY, UK

SECTION 2 – BUSINESS INTERRUPTION

BASIS OF COVER

	Description	Declared Values GBP	Limit of Indemnity GBP	Maximum Indemnity Period (months)
2	Gross Revenue including Increased Costs of Working - Declaration Linked Basis	67,451,597	89,933,214	24
3	Gross Revenue including Increased Costs of Working - Declaration Linked Basis	12,409,264	16,545,272	36

BUSINESS INTERRUPTION EXTENSIONS

	Description	Limit GBP	Maximum Indemnity Period (months)
15	Prevention of Access (Non Damage)	1,000,000	3

ENDORSEMENT

LIBEL AND SLANDER EXTENSION

The Company hereby agrees to indemnify the Insured against all sums that the Insured shall become legally liable to pay in respect of any act of libel or slander committed or uttered in good faith by the Insured that arises in connection with the Business from an Event that occurs during the Period of Insurance, and for which a claim is first made against the Insured and notified to the Company during the Period of Insurance.

Limit of Indemnity:

GBP 250,000 any one Event and in the aggregate for the Period of Insurance

BUSINESS INTERRUPTION EXTENSION AMENDMENT

Business Interruption Extension

Item 3 is re-stated as follows

Prevention of Access - Limit - Maximum claim payable is the Gross Revenue limit per hotel as declared to the Company.

Limit of Indemnity 24 Months.

Terrorism (Amended)

1. The Limit of Indemnity shown in The Schedule in respect of Section 7, 8 and 9 are deleted and re-stated as follows:

Limit of Indemnity		
Section 7	GBP 20,000,000	any one Event
Section 8	GBP 20,000,000	any one Event
	GBP 20,000,000	Terrorism Sub-Limit any one Event
Section 9	GBP 20,000,000	any one Event and in the aggregate for the Period of Insurance
	GBP 20,000,000	Terrorism Sub-Limit any one Event and in the aggregate for the Period of Insurance

ADDITIONAL NAMED INSURED'S

Starboard Hotels Four LLP & Days Inns Worldwide Inc & WHG (Ireland) Hotels & Wyndham

Worldwide Corporation & Wyndham Hotel Group LLC

SBH Hospitality Ltd, Best Western International Inc (BWI), Interchange and Consort Hotels Ltd trading as Best Western GB

NAMED INSURED

Starboard Hotels Ltd & Associated Companies	Park House 10 Penn Road Beaconsfield HP9 2LH UK

Greenock Hotels Ltd

New World Barnsley Ltd

New World Crewe Ltd

New World Haydock Ltd

New World NEC Ltd

SBH Birmingham Ltd

SBH Blackpool Ltd

SBH Camborne Ltd

SBH City of Sheff Ltd

SBH Cliffden Ltd

SBH Derby

SBH Gatwick Ltd

SBH Leeds Ltd

SBH Leicester Ltd

SBH Park Holding Ltd & SBH Park Ltd

SBH Plymouth Ltd

SBH Ramsgate Ltd

SBH Tamworth Ltd

SBH Windermere Ltd

Starboard Hotels One LLP

(3) HOLLYWOOD BOWL

COMMERCIAL PROPERTY POLICY

Insured:	Hollywood Bowl Group Plc and Subsidiary Companies		
Address:	West Wing, Focus 31, Cleveland Road, Hemel Hempstead, Hertfordshire, HP2 7BW		
The Business:	Proprietors of Bowling Centres, Property Owners and Ancillary Leisure Activities. including but not limited to Bowling, Pool Tables, Associated Food Drink including Alcohol, Amusement Machines, Virtual Reality Gaming Machines and Indoor Mini Golf		
Period Of Insurance:	a)	From	1st October 2019
		To	30th September 2020
		both days inclusive	
	b)	Any subsequent period for which the Insured shall pay and the Company shall agree to accept the Renewal Premium	

THE SCHEDULE

The Premises	All premises owned occupied or utilised by the Insured for which they are responsible or for which they wish to assume responsibility within the Geographical Limits as stated within the Policy wording which have been declared to and accepted by the Company

ENDORSEMENTS

PREVENTION OF ACCESS (NON DAMAGE)

Section 2 is extended to include loss following interference with the Business carried out by the Insured in consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises which shall prevent or hinder use of the Premises or access thereto or, interference with the Business carried out by the Insured. Provided that the Company shall not be liable under this extension for more than the amount shown against this extension in the Schedule.

LOSS OF ATTRACTION

Under Business Interruption Cover provided by this Policy is extended to include loss resulting from interruption to or interference with the Business in consequence of Damage to property in the vicinity of the Premises which shall cause loss of custom to the Insured directly due to loss of amenities in the vicinity if the Premises of the property of the Insured therein shall be damaged or not.

Under this extension vicinity is defined as no more than 1 mile radius from the Premises.

LOSS OF LICENCE EXTENSION

Under Section 2. the Company agrees (subject to the terms, definitions, exclusions, provisions and conditions of this Policy) that in the event of The Licence or any part thereof which has been granted by the Licensing Authority in respect of the Premises described in the Schedule for the following licensable activities:

a) the sale by retail of alcohol;
b) the supply of alcohol by or on behalf of a club to or to the order of a member of the club
c) the sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for the consumption on the Premises where the sale takes place;

being totally and permanently forfeited, withdrawn, revoked or suspended or refused transfer or renewal by the Licensing Authority during the Period of Insurance the Company will pay or make good to the Insured all loss that the Insured sustains in respect of:

…

4. loss of Gross Profit being the aggregate of:

a. the Reduction in Turnover (including loss of wholesale margin (otherwise known as 'wet rent') on tied drinks and other sales through the Insured tenanted estate) less Turnover from Alternative Trading multiplied by the Rate of Gross Profit; and,
b. additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the Reduction in Turnover which but for that expenditure would have taken place during the Indemnity Period in consequence of the loss of The Licence but not exceeding the amount of the reduction in Gross Profit thereby avoided.

less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the Business as may cease or be reduced in consequence of the loss of The Licence;

provided that the liability of the Company under this Endorsement shall not exceed the Limit of Indemnity per Premises.

ENDORSEMENT DEFINITIONS

2. Limit of Indemnity:

The total liability of the Company arising under this Endorsement ascertained after the application of all other terms and conditions irrespective of the number of claims during the Period of Insurance.

Limit of Indemnity any one occurrence is GBP250,000 subject to GBP1,000,000 any one Period of Insurance

(4) FULLERS

COMMERCIAL PROPERTY POLICY

Insured:	Fuller Smith & Turner pic & Subsidiary Companies		
Address:	Griffin Brewery Chiswick Lane South Chiswick London W4 2QB		
The Business:	Hoteliers, Owners and Operators of licensed premises, Property Owners, Developers, and Landlords, Cellar Training facilities to own staff and third parties and any other business of the Insured		
Period Of Insurance:	a)	From	Noon 1st May 2019
		To	Noon 1st May 2020
	b)	Any subsequent period for which the Insured shall pay and the Company shall agree to accept the Renewal Premium	

THE SCHEDULE

The Premises	All premises owned occupied or utilised by the Insured for which they are responsible or for which they wish to assume responsibility within the Geographical Limits as stated within the Policy wording which have been declared to and accepted by the Company

Policy Limit of Indemnity:	GBP 100,000,000	Combined Material Damage and Business Interruption any one loss occurrence under either or both Sections 1, 2 and 3 of this Policy

Note:

Irrespective of and notwithstanding various Item(s), Sum(s) Insured or Limit(s) of Indemnity which may apply in respect of any one occurrence as insured by this Policy the maximum amount payable in any one Period of Insurance under this Policy is the Policy Limit of Indemnity

SECTION 1 – MATERIAL DAMAGE

INNER LIMITS OF LIABILITY

Inner Limit No	Description	Limit of Indemnity GBP
…		
22	Guest Property (Hotel Proprietors Act)	GBP 20,000 per guest (limited to GBP 100,000 in the annual aggregate)

SECTION 2 – BUSINESS INTERRUPTION

EXTENSIONS APPLICABLE TO SECTION 2

Item No.	Description	Limit GBP	Maximum Indemnity Period (months)
…			
13	Prevention of Access (Non Damage)	1,000,000	3

ENDORSEMENTS APPLICABLE TO THIS POLICY

2. DEDUCTIBLES

i. The Company shall not be liable for the first GBP 10,000) of each and every loss, occurrence or series of losses arising out of one occurrence under Section 1 to 3 and Section 5 other than:
   a. Leased and tenanted properties reducing to GBP 1,000;
   b. Exhibition Equipment reducing co GBP 1,000;
   c. Contract Works reducing to GBP 1,000;
   d. Claims Preparation Costs reducing to GBP 1,000;
   e. Money and Visitors/Employees personal effects Nil

f. Any failure less than -I hours in duration for Failure of Utilities
g. In respect of operations of Nectar Imports which reduced to GBP 1,000
h. in respect of operations of The Stable which is reduced to GBP 1,000

ii. Notwithstanding Condition 12. Deductibles under Conditions Applicable to All Sections it is noted that all Limits of Indemnity and Inner Limits of Liability within this Policy are exclusive of the Deductible.

…

5. SECTION 1 – EXPEDITING EXPENSES

Section I extends to include extra charges for overtime, nightwork, work on public holidays, express freight, air freight (including liability for customs, taxes excise or other duties) and the like necessarily and reasonably incurred by the Insured in the reinstatement replacement or repair of the Property Insured indemnifiable under this Section.

The Company shall not be liable for more than the Limit of Indemnity staled in the Schedule.

6. SECTION 1 – PROPERTY IN THE OPEN

Under Section 1 Item 14. Property in the open and notwithstanding any Exclusion relating to moveable property or property in the open it is noted that the Defined Perils of wind and flood will apply in respect of this item.

The Company shall not be liable for more than the Limit of indemnity stated in the Schedule.

…

9. SECTION 1 – DETERIORATION OF STOCK

Under Section I the Company agrees that subject to the terms, exceptions, limits and conditions contained herein or endorsed hereon the Company will indemnify the Insured against Damage to stock in the cold chamber of any item of Machinery/Plant by deterioration or putrefaction due to rise or fall in temperature resulting from any cause not hereinafter excluded or due to the action of escaping refrigerant fumes.

Provided that the liability of the Company during any period of this insurance shall in no case exceed the Limit of Indemnity stated in the Schedule.

Conditions

1 If at the time of any occurrence giving rise to Damage the total value of Stock contained in the cold chamber of any item of Machinery/Plant shall exceed the Limit of Indemnity stated in the Schedule the Insured shall be considered to be his own insurer for the differences and shall bear a rateable share of the Damage accordingly;
2 The Company's officials shall have the right to inspect and examine at all reasonable times any item of Machinery/Plant.

The Insured shall arrange that a Contract is in force providing for competent specialists to maintain and adjust the Machinery/Plant.

EXCLUSIONS

The Company shall not be liable in respect of:

1 Damage resulting from the deliberate act of any public electricity supply authority or the exercise by any such authority of its power to withhold or restrict supply unless done to safeguard the distribution system;
2 Loss of goodwill or other consequential loss of any nature whatsoever.

…

11. NEW ACQUISITIONS

This Policy shall extend to include any new premises or premises of new subsidiary companies acquired by the Insured within the Geographical Limits,

Provided that:

(A) the activities carried on shall be of a similar nature to the Insured's existing activities and shall fall within the description of the Business stated in the Schedule;
(B) the Company shall not be liable for more than the Limit of Indemnity stated in the Schedule;
(C) the Company shall not be liable if such company or premises is insured by or would but for the existence of this policy be insured by any more specific policy or policies except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this insurance not been effected.

…

16. SECTION 2 – PREVENTION OF ACCESS (NON DAMAGE)

Section 2 is extended to include loss following interference with the Business carried out by the Insured in consequence of action by the Police or other Statutory Authority following danger or disturbance within I mile of the Premises which shall prevent or hinder use of the Premises or access thereto or. interference with the Business earned out by the Insured.

Provided that the Company shall not be liable under this extension lor more than the amount shown against this extension in the Schedule.

17. SECTION 2 – ADVANCE PROFITS

The Item under Section 2 of the insurance is limited to loss of .Anticipated Gross Profit arising out of Damage to Buildings in course of erection or fitting out for the future occupation by the Insured or to plant and machinery in the course of installation for future use by the Insured which, for the purposes of this insurance, shall be deemed to be Damage to property used by the Insured for the purposes of the Business:

Provided that:

a) the liability of Company under this hem shall not exceed the Sum specified in the Schedule;
b) it is a condition precedent to the Company's liability hereunder that on the expiry of each Period of Insurance the Insured shall declare to Company the Anticipated Gross Profit projected for the first 12 months of operation of any such property which was in the course of erection, fitting up or installation during the said Period of Insurance and that any additional premium required by the Company shall be paid.

Indemnity Period for the purposes of this Item shall mean the period beginning with the date upon which, but tor the Damage, turnover would have commenced and ending not later than the Maximum Indemnity Period thereafter during which the results of the Business shall be affected in consequence of the Damage.

The Company's Limit of Indemnity shall not exceed the limit stated in the Schedule.

18. SECTION 2 – LOSS OF ATTRACTIONS

Under Section 2 cover provided by this Policy is extended to include loss resulting from interruption to or interference with the Business IN consequence of Damage to property in the vicinity of the Premises which shall cause loss of custom to the Insured directly due to loss of amenities in the vicinity if the Premises of the property of the Insured therein shall be damaged or not.

Provided that this extension shall BE limited to the amount stated in the Schedule for any one occurrence.

19. SECTION 2 – INFECTIOUS DISEASES (INCLUDING FOOD SAFETY ACT 1990)

Under Extensions Applicable to Section 2, 2. Infectious Diseases is extended to include:

'Food Safety Act 1990 Compensation Costs'

The amount payable under this extension shall be the sale value of all products of the Insured which cannot be produced or sold in consequence of the enforcement action, less:

i) any sum saved in respect of such of the charges and expenses of the Business as may cease or be reduced in consequence of the enforcement action; and less
ii) any sum payable to the Insured as compensation under the terms of the Food Safety Act or otherwise.

Notwithstanding the above the insurance by this clause extends to include costs and expenses necessarily incurred with the consent of the Company in the:

i) cleaning and decontamination of property used by the Insured for the purpose of the Business (other than stock in trade): and
ii) removal and disposal of contaminated stock in trade;

at or from the Premises, the use of which has been restricted on the order or advice of the competent local authority solely in consequence of the Incident.

The Company's Limit of Indemnity shall not exceed the limit stated in the Schedule.

…

31. SECTION 2 – IDENTITY OF SPECIFIED SUPPLIERS

Under Section 2 Business Interruption the following suppliers are identified as:

NAME	**ADDRESS**
Asahi UK	Griffin Brewery, Chiswick, Chiswick Lane South, Chiswick, London, W4 2QB
Cornish Orchards	Westnorth Manor Farm, Duloe, Cornwall, PL14 4PW

CONDITIONS APPLICABLE TO ALL SECTIONS

13. Departmental

In respect of Section 2 if the Business be conducted in departments the independent trading results for which are ascertainable the provisions of clauses (a) and (b) of Item 1. Gross Profit including Increase in Costs of Working – Declaration Linked Basis shall apply separately to each department affected by the Incident except that if the Declared Value by the said Item be less than the aggregate of the sums produced by applying the Rate of Gross Profit for each department of the business (whether affected by the Incident or not) to its relative annual Turnover (or to a proportionately increased multiple thereof where the Maximum Indemnity Period exceeds twelve months) the amount payable shall be proportionately reduced.

(5) LIBERTY RETAIL

Insured:	Liberty Zeta Limited and Subsidiary Companies		
Address:	16 Berkeley Street London W1J 8DZ UK		
The Business:	Retail Store and Associated Activities		
Period Of Insurance:	a)	From	31st January 2020
		To	30th January 2021
			both days inclusive
	b)	Any subsequent period for which the Insured shall pay and the Insurer shall agree to accept the Renewal Premium	

THE SCHEDULE

The Premises	All Premises owned occupied or utilised by the Insured for which they are responsible or for which they wish to assume responsibility within the Geographical Limits as stated herein which have been declared to and accepted by the Company.

SECTION 1 – MATERIAL DAMAGE

Inner Limits of Liability

Inner No	Limit Description	Limit of Indemnity GBP
15	Claim Preparation Costs	50,000 applying in addition

SECTION 2 – BUSINESS INTERRUPTION

BASIS OF COVER

Description		Declared Values GBP	Limit of Indemnity GBP	Maximum Indemnity Period (months)
1	Gross Profit including Increased Costs of Working – Declaration Linked Basis	Not Insured		
2	Gross Profit including Increased Costs of Working	40,064,840	40,064,840	18
3	Gross Profit including Increased Costs of Working	3,395,411	3,395,411	24
4	Gross Profit including Increased Costs of Working	12,893,114	12,893,114	36
5	Gross Profit including Increased Costs of Working	174,157,171	174,157,171	48
6	Rent Receivable	Not Insured		
Total Business Interruption		230,510,536	230,510,536	

BUSINESS INTERRUPTION EXTENSIONS

Description		Limit GBP	Maximum Indemnity Period (months)
1	Additional Increase in Cost of Working	5,000,000	12
18	Prevention of Access (Non Damage)	750,000	3
19	Loss of Attraction	1,000,000	3

ENDORSEMENTS

CLAIM PREPARATION COSTS

The insurance by this Policy extends to pay the exceptional costs not otherwise covered herein necessarily and reasonably incurred by the Insured with the Company's prior consent to prepare and verify the amount of claims admitted under this Policy in accordance with the Claims Conditions of this Policy.

These costs shall not include the costs of negotiation of the claim with the Company or its representatives.

The liability of the Company under the terms of this Condition shall not exceed the limit stated in the Schedule.

Subject to the terms, Conditions, limits and Exceptions of this Policy

GROSS PROFIT INCLUDING INCREASE IN COST OF WORKING

Under Business Interruption the insurance under this Item is limited to loss of Gross Profit due to a) Reduction In Turnover and b) Increase In Cost of Working and the amount payable as indemnity thereunder shall be:

a) In respect of Reduction In Turnover the sum produced by applying the Rate of Gross Profit to the amount by which the turnover during the Indemnity Period shall in consequence of the Incident fall short of the standard turnover;
b) In respect of Increase In Cost Of Working the additional expenditure (subject to the provisions of the uninsured standing charges clause) necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in turnover which but for that expenditure would have taken place during the Indemnity Period in consequence of the Incident but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;

less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the business payable out of Gross Profit as may cease or be reduced in consequence of the Incident;

provided that if the Sum Insured by this Item be less than the sum produced by applying the Rate of Gross Profit to the Annual Turnover (or to a proportionately increased multiple thereof where the Maximum Indemnity Period exceeds twelve months) the amount payable shall be proportionately reduced.

DEFINITIONS

Annual Turnover:

The turnover during the twelve months immediately before the date of the Incident to which such adjustments shall be made as may be necessary to provide for the trend of the Business, and for variations in or other circumstances affecting the Business either before or after the Incident which would have affected the Business had the Incident not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Incident would have been obtained during the relative period after the Incident.

Subject to the terms, Conditions, limits and Exceptions of this Policy

NAMED INSURED

Liberty Zeta Limited and Subsidiary Companies

16 Berkeley Street

London

W1J 8DZ

UK

C W Headdress Ltd, Christy & Co Ltd, Christys of London Ltd

7 Witan Park

Avenue Two

Witney

Oxfordshire

OX28 4FH

UK

Subject to the terms, Conditions, limits and Exceptions of this Policy

PREVENTION OF ACCESS (NON DAMAGE)

Under Business Interruption loss following interference with the Business carried out by the Insured in consequence of action by the Police or other Statutory Authority following danger or disturbance within 1 mile of the Premises which shall prevent or hinder use of the Premises or access thereto or, interference with the Business carried out by the Insured.

Provided that the Company shall not be liable under this extension for more than the amount shown against this extension in the Schedule.

Subject to the terms, Conditions, limits and Exceptions of this Policy

(6) BATH RACECOURSE

RISK DETAILS

TYPE:	Material Damage and Business Interruption
INSURED:	Arena Racing Company, Arena Racing Corporation Limited & NR Acquisitions Topco Limited, Conzumel Limited &/or subsidiary companies
PRINCIPAL ADDRESS:	3rd Floor, Millbank Tower, 21-24 Milibank, London SW1P 4QP
PERIOD:	From: 01 January 2020 To: 31 December 2020 Both days inclusive Greenwich Mean Time
INTEREST:	Material Damage and Business Interruption as defined in the attached Wording.

SUMS INSURED:

SECTION 1 – MATERIAL LOSS OR DAMAGE

Item	Property Insured	Sums Insured (Declared Values)
A	Buildings	GBP 597,515,000 (GBP 478,012,000)
B	Contents	GBP 60,299,927 (GBP 48,239,942)
C	(i) Stock	GBP see Memoranda 9
	(ii) Stock Debris Removal	GBP 100,000
	Limitations applicable to Items B and C:-	
	(i) Contents/Stock in Transit	GBP 25,000 Any one loss
	(ii) Property at Exhibitions	GBP 25,000 Any one exhibition

SECTION 2 – BUSINESS INTERRUPTION

Item	Interest	Sums Insured/ Estimates/Limits
A	Estimated Gross Profit (Declaration Linked Basis)	GBP Not Covered
	Maximum Indemnity Period:- months	
	Uninsured Variable Costs as stated herein	
B	Estimated Gross Revenue (Declaration Linked Basis)	GBP 68,656,147
	Maximum indemnity Period: 12 months	
	Estimated Gross Revenue (Declaration Linked Basis)	GBP 16,466,592
	Maximum Indemnity Period: 24 months	
	Estimated Gross Revenue (Declaration Linked Basis)	GBP 25,515,911
	Maximum Indemnity Period: 36 months	
C	Rent Receivable	GBP 5,592,736
	Maximum Indemnity Period: 12 months	
D	Increase in Cost of Working	GBP 5,592,736
	Maximum Indemnity Period: 12 months	
E	Additional Increase in Cost of Working	GBP 100,000
	Maximum Indemnity Period: 12 months	
Note	Item E is only operative when Items A B, C or D are operative.	

Section 4 – Not Covered

EXCESS:

All claims for Damage arising out of one occurrence or series of events arising out of one occurrence shall be adjusted as one claim and from the amount of such adjusted claim the sum specified below shall be deducted.

Applicable to Section 1 Items A, B, and C and Section 2 combined arising from

(a)	fire, lightning, explosion, aircraft, riot, civil commotion, earthquake, impact (other than by the Insured's own vehicles)	GBP	5,000
(b)	subsidence, heave and landslip applicable to Buildings	GBP	5,000
(c)	Theft	GBP	5,000
(d)	any other Damage	GBP	5,000

CONDITIONS: Wording: Bluefin/Liberty Combined Wording 2016 amended as follows

It is hereby understood and agreed that:-

6. In respect of Section 1 - Material Damage, racecourse turfs, golf greens, fairways, course drainage sprinkler systems and tees are restricted to Damage arising from fire, lightning, explosion, aircraft or other aerial devise or articles dripped therefrom, riot, civil commotion, strikers, locker-out workers, persons taking part in labour disturbances, malicious persons other than thieves and accidental damage caused by emergency service vehicles and is limited to GBP 50,000 any one loss. This limitation does not apply to the Tapeta surfacing at Newcastle or Wolverhampton racecourse.

7. Damage to golf green, fairways, course drainage sprinkler systems and tees includes the cost of repair following accidental damage caused by the misuse of fertilisers or pesticides, limited to GBP 20,000 in the aggregate.

8. In respect of Section 1 - Material Damage, Damage to landscaped pathways is restricted to Defined Perils (Liberty Standard Wording) as stated below and subject to a limit of GBP 50,000 each and every claim:-

   Defined Perils (Liberty Standard Wording)

   Defined Peril shall mean fire, lightning, explosion, aircraft or other aerial devices or articles dropped therefrom, earthquake, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons other than thieves, storm, flood, escape of water from any tank, apparatus or pipe, impact by any road vehicle or animal, or accidental discharge or leak of water from any automatic sprinkler installation.

20. It is noted and agreed that Section 1 - Particular Settlement Terms, Metered Water is deleted and replaced with the following

    Metered Utility Costs damage & Unauthorised Use

    The Insurance by Item B includes loss of metered water, electricity, gas, oil, telecommunication services and or other metered supply services at the Premises for which the Insured is legally responsible to the supplier and for the unauthorised use by third Pprties of such series during the Period of Insurance and for which the Insured is held legally responsible to the supplier for such costs subject to the Insurers liability not exceeding GBP 50,000 any one occurrence or series of events arising out of one occurrence.

22. Notwithstanding anything contained herein to the contrary, the limit in respect of Section 2 - Particular Settlement Terms, Denial of Access:-

    - Proviso (i) is amended in respect of (a) to GBP 1,000,000 and a maximum indemnity period of 3 months

    - Proviso (ii) and (iii) are amended in respect of (b) and (c) to GBP 2,500,000 and a maximum indemnity period of 3 months.

40. In respect of Section 2, Item E Additional Increase in Cost of Working at Premises situate Lingfield Marriot Hotel & Country Club the Maximum Indemnity Period is amended to 24 months and the Limit GBP200.000

INFORMATION

BUSINESS:

Owners, managers and operators of horseracing courses and dog racing tracks, horse trials, harness racing events and all related activities, including on non-racedays, but not limited to training academy for pupil horse trainers, internal and external catering, creche facilities, property owners and provision of facilities for horse trials and events, conferences, exhibitions, seminars, banquets, provision of wedding venues, sports and leisure activities, trade fayres, campsite markets, golf courses, club house auctions, public house, hotels and the provision of land let for the use by circuses, fayres and concerts, and other similar facilities, and sites of specific scientific interest, car boot sales, restaurants, other outdoor events (cross country races etc), hoteliers and operators of golf clubs and security agents.

COMBINED INSURANCE

IN CONSIDERATION OF the Insured named in The Schedule having paid or agreed to pay the premium the Insurer agrees to provide the insurance described in this Certificate subject to the Terms and Conditions for the Period of Insurance stated in The Schedule

Unless stated otherwise the Insurer will not pay more than the Sums Insured Compensation or Limits of Indemnity in any one Period of Insurance

SECTION 1 – MATERIAL DAMAGE

If any of the Property Insured stated in The Specification suffers Damage (or in respect of Item E only Deterioration) the Insurer will indemnify the Insured as follows

…

SETTLEMENT TERMS

Except as amended by the Particular Settlement Terms the Insurer will pay to the Insured the value of the property at the time of the Damage or the amount of the damage or at Insurer's option reinstate or replace such property or any part thereof

The Insurer's liability in respect of all Items of this Section arising out of any one incident or series of incidents arising from one cause shall not exceed the total Sum Insured nor in respect of any Item its Sum Insured provided that the Sum Insured shall not be reduced by the amount of any loss paid if the Insured undertakes to pay an appropriate additional premium if required to reinstate the Sum Insured

SECTION 2 – BUSINESS INTERRUPTION

The Premises - any premises owned occupied or used by the Insured or where goods or records are stored or worked upon or services provided by others on behalf of the Insured anywhere in Great Britain Northern Ireland the Channel Islands or the Isle of Man including whilst in transit in Great Britain Northern Ireland the Channel Islands or the Isle of Man

Gross Revenue - the money paid or payable to the Insured for work done and services provided in the course of The Business at The Premises

Standard Gross Revenue - the Gross Revenue during that period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period

SETTLEMENT TERMS

…

B Estimated Gross Revenue (Declaration Linked Basis)

The Insurer will pay as indemnity in respect of

(a) Reduction in Gross Revenue - the amount by which the Gross Revenue during the Indemnity Period falls short of the Standard Gross Revenue in consequence of the Damage
(b) Increase in Cost of Working - the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Gross Revenue which but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage but not exceeding the total of

the amount of the reduction thereby avoided

plus

GBP 250,000 beyond that recoverable under other Items necessarily incurred in consequence of the Damage for the purpose of maintaining The Business during the Indemnity Period

Limit of Liability (Applicable to items A and B)

The liability of the Insurer shall not exceed in respect of Gross Profit/Gross Revenue 133.33% (one hundred and thirty three and one third per centum) of the Estimated Gross Profit/Estimated Gross Revenue stated in The Specification nor in the whole 133.33% (one hundred and thirty three and one third per cent) of the Estimated Gross Profit/Estimated Gross Revenue

C Rent Receivable

The Insurer will pay as indemnity in respect of

…

(c) Increase in Cost of Working - the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Rent Receivable which but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage but not exceeding the total of

the amount of the reduction in Rent or anticipated rent receivable thereby avoided

plus

GBP 250,000 beyond that recoverable under other Items necessarily incurred in consequence of the Damage for the purpose of maintaining The Business during the Indemnity Period

Provided that if the Sum Insured by this Item be less than the annual Rent Receivable the amount payable shall be proportionately reduced

D Increase in Cost of Working

The Insurer will pay as indemnity

the additional expenditure reasonably incurred with the Insurer's consent in order to minimise any interruption or interference with The Business during the Indemnity Period in consequence of the Damage

E Additional Increase in Cost of Working

The Insurer will pay as indemnity

the additional expenditure beyond that recoverable under other Items necessarily incurred in consequence of the Damage for the purpose of maintaining The Business during the Indemnity Period provided that the Insurer's liability in respect of loss shall not exceed the amount stated in The Specification

SECTION 2 – PARTICULAR SETTLEMENT TERMS

Alternative Trading

If during the Indemnity Period goods are sold or services rendered elsewhere than at The Premises for the benefit of The Business either by the Insured or by others on their behalf the money paid or payable in respect of such sales or services shall be taken into account in arriving at the Turnover/Gross Revenue during the Indemnity Period

Denial of Access

This Section extends to include any claim resulting from interruption of or interference with The Business carried on by The Insured at The Premises in consequence of

…

(b) action by the Police Authority and/or the Government or any local Government body or any other competent authority following danger or disturbance within a one mile radius of The Premises which shall prevent or hinder use of The Premises or access thereto
(c) action by the Police Authority and/or the Government or any focal Government body or any other competent authority following the suspected or actual presence of a harmful device on or in the vicinity of The Premises provided that the Police Authority shall be informed as immediately as the Insured become aware of the presence of such device

…

provided that

1. after the application of all other terms conditions and provisions of this Section the liability of the Insurer shall not exceed

   (ii) GBP 1,000,000 in respect of (b) above any one loss

…

Savings

If any of the charges or expenses of The Business payable cease or reduce in consequence of the Damage such savings during the Indemnity Period shall be deducted from the amount payable

Sections 1 and 2 – Conditions

…

Claims Preparation Clause

Notwithstanding anything contained herein to the contrary this Certificate is extended to pay the exceptional costs not otherwise covered herein necessarily and reasonably incurred by the Insured with the Insurer's prior consent to prepare and verify the amount of claims admitted under this Certificate in accordance with the claims conditions of this Certificate where such claims are in excess of GBP 50,000 above the applicable deductible.

These costs shall not include the costs of negotiation of the claim with the Insurer or its representatives.

The liability of the Insurer under the terms of this Condition shall not exceed GBP 50,000 in respect of any one claim or series of claims arising from a single occurrence

(7) INTERNATIONAL ENTERTAINMENT HOLDINGS

CommercialSelect
Amendment Schedule

Please note that you must advise your insurance adviser of any changes to the risk and items to be covered.
An * indicates where changes have occurred.

Policy Number	27/SZ/23716656/04	Agreement Number:	Not Applicable
Account Number:	27/00032	Insurance Adviser:	Willis Ltd

The Insured: INTERNATIONAL ENTERTAINMENT HOLDINGS LIMITED

Postal Address: THE AMBASSADORS THEATRE
WEST END
LONDON
WC2H 9ND

Additional Premium:	£	0.00	Annual Premium:	£	1,015,934.00
Insurance Premium Tax:	£	0.00	Insurance Premium Tax:	£	121,912.08
Total Additional Premium:	£	0.00	Total Annual Premium:	£	1,137,846.08

Effective Date: 02/08/2019 **Renewal Date:** 30/04/2020 at 12.00 hrs

Business Description: THEATRE, CINEMA, CONCERT HALL, TICKETING AND RESTAURANT OWNERS, OPERATORS, MANAGERS, THEATRE PRODUCTION COMPANY, MARKETING, DESIGN, COMMUNICATIONS, FULL SERVICE DIGITAL MEDIA AND MARKETING AGENCY

Property Damage All Risks Section

Item	Description	Excluded Events	Sum Insured
1.	Buildings	None	£953,517,762 (£829,145,880)

Business Interruption All Risks Section

Clauses applicable to this Section (please refer to the Clause Details for full wordings)

S/29/1 Denial of Access

S/30/1 Endanger Life or Property

S/25/1 Insured's Title

It is hereby noted that the full title is as stated below and not shown in the schedule

International Entertaiment Holdings Limited and Subsidiary companies incuding Ambassador Entertainment Group Limited, Woking Turnstyle Limited, Ambassador Theatre Group Limited, Ambassador Theatre (Venues) Limited, Maidstone Productions (Playhouse) Limited, Savoy Theatre Limited, Savoy Theatre Holdings Limited, Maidstone Productions (Savoy) Limited, Sonia Friedman Productions Limited and Ticket Machine Limited t/a Lovetheatre.com, AKA Promotions Ltd, Encore International Merchandise Ltd, AKACP Ltd, CP Studio Ltd, DMS Limited and CPAV Ltd

S/26/1 Business Description

Full business description is as stated below:

Theatre, cinema, concert hall and resturant owners, operators, managers, theatre production company, marketing, deisign, communications, full service digital media and marketing agency

S/36/1 Property Damage Business INT Excess

Property Damage Business Interruption Excess = £5,000 each single occurrence where the Insured has made a claim for a Single Property Loss and/or a Single Business Interruption Loss affecting one or more Insured Locations that arise from, are attributable to or are in connection with the same single occurrence, only one Retention being the largest applicable will apply to all Single Property Losses and Single Business Interruption Losses combined.

S/29/1 Denial of Access

This Section includes loss resulting from interruption of or interference with The Business carried on at The Premises in consequence of

(a) Damage to other property in the vicinity of The Premises which shall prevent or hinder the use of or access to The Premises whether the Premises or property of the Insured are damaged or not

(b) access to The Premises being hindered or prevented as a result of the actions of or on the order of the Police and/or the Government or any local Government body due to the suspected or actual presence of an incendiary or explosive device on or in the vicinity of The Premises insured subject to a limit of GBP 1,000,000 and excluding

(i) any incident involving an interruption of less than four hours duration

(ii) any period other than the actual period of hindrance or prevention of access to the premises

(iii) any consequence of labour disputes or infectious or contagious diseases

S/30/1 Endanger Life or Property

Denial of Access Endanger Life or Property

Any claim resulting from interruption of or interference with the Business as a direct result of an incident likely to endanger human life or property within 1 mile radius of the premises in consequence of which access to or use of the premises is prevented or hindered by any policing authority, but excluding any occurrence where the duration of such prevention or hindrance of us is less than 4 hours, shall be understood to be loss resulting from damage to property used by the Insured at the premises provided that

i) The Maximum Indemnity Period is limited to 3 months, and

ii) The liability of the Insurer for any one claim in the aggregate during any one Period of Insurance shall not exceed £500,000

Z/164/1 Additional Increase in Cost of Working

Cover extends to include additional expenditure beyond that the Insurer will pay as indemnity in respect of Increase in Cost of Working under Basis of Settlement, necessarily and reasonably incurred in consequence of Business Interruption for the purpose of avoiding or diminishing the Gross Profit during the Indemnity Period.

The most the Insurer will pay for any one claim is £3,794,500

Policy Definitions

The following definitions apply to this Policy, unless amended by Section Definitions, and are denoted by bold text throughout this Policy.

Business

The Business Description stated in the **Schedule**

40. Contract Works

Cover for each Buildings item extends to include Contract Works undertaken in performance of any contract and for which the Insured are responsible under the terms of the contract, provided that

a. the Insurer's liability shall not exceed £250,000 in respect of any one contract in respect of all losses arising out of one occurrence

b. this insurance shall only apply in so far as the Contract Works are not otherwise insured

c. the Insurer shall not be liable for the first £1,000 of each and every claim.

Business Interruption All Risks Section

Estimated Gross Profit

Definitions

Business Interruption

Loss resulting from interruption of or interference with the **Business** carried on by **the Insured** at the premises in consequence of an **Event** to property used by **the Insured** at the **Premises** for the purpose of the Business.

Event

Accidental loss or destruction of or damage to property used by **the Insured** at the **Premises** for the purpose of the **Business.**

Premises

The buildings at the address or addresses shown in the **Schedule,** including their grounds, all within the boundaries for which **the Insured** are responsible and being, unless more specifically described in the **Schedule,** occupied by **the Insured** for the purpose of the **Business.**

Turnover

The money paid or payable to **the Insured** for goods sold and delivered and for services rendered in the course of the **Business** at the **Premises.**

Cover

The Insurer will pay **the Insured** for **Business Interruption** by any **Event**, excluding

1. **Business Interruption** caused by or consisting of

a. inherent vice, latent defect, gradual deterioration, wear and tear, frost, change in water table level, its own faulty or defective design or materials

b. the bursting of any boiler (not being a boiler or economiser on the **Premises** or a boiler used for domestic purposes only), belonging to **the Insured** or under the control of **the Insured** in which internal pressure is due to steam only

c. pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds

but **the Insurer** will pay for subsequent **Business Interruption** which itself results from a cause not otherwise excluded

d. faulty or defective workmanship by **the Insured** or any employee of **the Insured**

e. operational error or omission by **the Insured** or any employee of **the Insured**

but **the Insurer** will pay for

i. such Business Interruption not otherwise excluded which itself results from a Specified Event

ii. subsequent Business Interruption which itself results from a cause not otherwise excluded

f. acts of fraud or dishonesty by any partner, director or employee of **the Insured** but the Insurer will pay for such **Business Interruption** not otherwise excluded which itself results from a **Specified Event**

Basis of Settlement

The Insurer will pay **the Insured**, in respect of each item covered, the amount of their claim for **Business Interruption**, provided that at the time of any **Event**

A. there is an insurance in force covering the interest of **the Insured** in the property at the **Premises** against such **Event** and that

i. payment has been made or liability has been admitted for payment, or

ii. payment would have been made or liability would have been admitted for payment but for the operation of a proviso in such insurance excluding liability for claims below a specified amount

B. the most **the Insurer** will pay for any one claim is

i. 133 1/3% of the **Estimated Gross Profit**

ii. for any other item, 100% of the **Sum Insured** or any other limit of liability in this **Section**

iii. in total the sum of 133 1/3% of the **Estimated Gross Profit** and 100% of the **Sums Insured** or limits of liability for any other items.

The **Sums Insured** or limits of liability shall not be reduced by the amount of any claim as insured under this **Section** provided that

a. **the Insurer** does not give written notice to the contrary within 30 days of the notification of any **Event**

b. **the Insured** pays the appropriate additional premium on the amount of the claim from the date of the **Event** to the expiry of the **Period of Insurance**

c. **the Insured** agrees to comply with any security recommendations or other measures **the Insurer** may require to reduce the risk of an **Event.**

The Insurer will pay **the Insured** as indemnity in consequence of **Business Interruption** for loss of **Gross Profit** due to

A. Reduction in **Turnover**, and

B. Increase in Cost of Working.

Reduction in **Turnover** means the sum produced by applying the **Rate of Gross Profit** to the amount by which the **Turnover** during the **Indemnity Period** falls short of the **Standard Turnover**.

Increase in Cost of Working means the additional expenditure (subject to the Uninsured Working Expenses clause) necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in **Turnover** which but for that expenditure would have taken place during the **Indemnity Period**.

Extensions

Any claim resulting from interruption or interference with the **Business** in consequence of

A. accidental loss, destruction or damage at any Situation or to any Property shown below, or

B. any of the under-noted Contingencies

within the **United Kingdom**, shall be understood to be **Business Interruption** by an **Event** covered by this **Section**, provided that after the application of all other terms, conditions and provisions of this **Section** and as shown below the liability of the Insurer for any one claim shall not exceed in the whole 133 1/3% of the **Estimated Gross Profit**, or the percentage of 133 1/3% of the **Estimated Gross Profit**, or the amount shown below (or the amount as specified otherwise in the **Schedule**) against any of the Situations or any of the Property or any Contingency as the Limit, whichever is the less.

Cover

Limit of Indemnity

The Insurer's liability for all compensation, costs and expenses payable (including interest thereon and the costs of defending a Health and Safety legislation prosecution) in respect of any one claim or series of claims arising out of one occurrence shall not exceed the Limit of Indemnity stated in the **Schedule**.