

Claim No: FL-2020-000018

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

Between:

THE FINANCIAL CONDUCT AUTHORITY

Claimant

– and –

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

Defendants

DEFENCE OF THE THIRD AND FIFTH DEFENDANTS

A. Summary

1. This Defence is the statement of case of the Third and Fifth Defendants.
2. The Third and Fifth Defendants do not plead to allegations in the Particulars of Claim advanced against other Defendants and/or which are not relevant to the case against

the Third and Fifth Defendants. The Third and Fifth Defendants reserve the right to adopt any argument or the benefit of any argument advanced by any other Defendant.

3. Save where otherwise indicated:

3.1 Without admission and for convenience only, the Third and Fifth Defendants adopt the headings and defined terms in the Particulars of Claim.

3.2 References to paragraph numbers and Schedules are references to paragraphs and Schedules of the Particulars of Claim.

4. As to paragraph 4, the Third and Fifth Defendants deny the FCA's case save to the extent admitted or not admitted herein. The Third and Fifth Defendants' case is set out in detail below and is summarised as follows:

4.1 As to the issue of coverage:

(a) In relation to clauses providing cover for the action of competent authorities (MSA 1 Clause 1, MSA 3 Clause 1, EIO 1.1 Clause 3, EIO 1.2 Clause 1), the FCA cannot prove any relevant insured peril, namely

(i) that there was the defined action (for example, action by competent authorities following a danger in the vicinity of the premises (see MSA1 Clause 1)) having the specified effect (for example, preventing access to the premises (see MSA 1 Clause 1)); and

(ii) in the case of the relevant Policies underwritten by the Third Defendant, that the Infectious Disease Carve-Out¹ does not apply.

(b) The FCA cannot prove the insured peril under the narrowly circumscribed MSA2 Clause 8.

¹ Defined at paragraphs 32 and 43 below.

- (i) That clause requires proof (amongst other things) that the loss suffered by the insured resulted solely and directly from the complete cessation of the Insured's business caused by an incident within a one mile radius of the Insured's premises.
 - (ii) Neither the pandemic nor the presence of a person having COVID-19 within one mile of the premises amounts to an incident. The FCA has not alleged the occurrence of any incident, let alone within a one mile radius.
 - (iii) Further or alternatively, any such incident must have resulted in a government / public authority order, or civil / statutory authority imposition (as the case may be) having the effect of denying or hindering physical access to the premises. The FCA cannot prove any such order / imposition having any such effect resulting from any such incident.
- (c) Two of the relevant Wordings of the Fifth Defendant (see MSA 1 Clause 6 and MSA2 Clause 6) provide localised disease cover for interruption of or interference with the business in consequence of and/or following illness resulting from notifiable disease (including, from 5 March 2020 onwards, Covid-19) sustained by any person within a twenty five mile radius of the premises.
 - (i) For coverage, these clauses require there to have been one or more cases of Covid-19 within a radius of 25 miles from the premises which were the specific cause of any claimed interruption of or interference with the business.
 - (ii) Neither the pandemic nor the countrywide reaction to the pandemic by the government which happens therefore to cover the area within a radius of 25 miles from the premises without reference to or reliance upon the specific case or cases within the relevant area is sufficient.

(iii) These clauses do not cover any interruption of or interference with the business prior to 5 March 2020 or any date thereafter falling before the first date when the Insured proves that at least one person within the 25 mile radius sustained Covid-19.

(iv) Further, as a result of this clause only providing local disease cover, an insured can recover only for those losses which have been caused by the proved incidence of Covid-19 within the 25 mile radius and not those losses caused by Covid-19 elsewhere in the UK.

4.2 Even if the insured peril is proved under any of the relevant Wordings, the FCA must still prove that such insured peril factually and proximately caused the loss claimed.

(a) On a true construction of the relevant Wordings, the Third and Fifth Defendants are only liable for loss proximately caused by the insured peril under the relevant Policy. None of the relevant Policies underwritten by the Third and Fifth Defendants insures against the peril purportedly identified in paragraph 53.1 as the *“only one proximate... cause of the assumed losses”*. The Third and Fifth Defendants’ case as to the proximate cause(s) of the loss(es) is set out in section N. below.

(b) Each insured peril in the relevant Wordings would be a factual cause and, if so, a proximate cause only to the extent of the business interruption loss (if any) which would not have occurred but for such insured peril. The “but for” test is applicable both as a matter of the application of ordinary principles of causation and by virtue of agreement between the parties in the applicable trends clauses.

B. Introduction

5. As to paragraph 5:

- 5.1 It is admitted that the FCA is the regulator of the Defendants and other insurers in the UK.
 - 5.2 By the Framework Agreement, the Third and Fifth Defendants have agreed with the FCA that declaratory relief may be sought by the FCA in relation to the disputed issues (as defined in Recital E of the Framework Agreement) for the purpose and to the extent set out in clause 1.1 of the Framework Agreement.
 - 5.3 Insofar as the FCA seeks declaratory relief on broader issues, including on issues of fact, the Third and Fifth Defendants have denied at the first CMC, and continue to deny, that the FCA is entitled to do so or that the present proceedings are the fair, appropriate or proper forum in which to do so.
 - 5.4 The last sentence is noted.
6. Paragraphs 6 and 7 are admitted. The Third and Fifth Defendants will refer to and rely upon the Framework Agreement as necessary.

The Parties

7. Paragraphs 8 and 9 are admitted.
8. As to paragraph 10, the relevance of Annexe 1 to the Particulars of Claim is not understood and is accordingly denied. Without prejudice to the foregoing:
 - 8.1 Paragraphs 1 to 10 of Annexe 1 to the Particulars of Claim are admitted.
 - 8.2 The Third and Fifth Defendants do not otherwise plead to Annexe 1 to the Particulars of Claim, and the FCA is required to prove the facts asserted and their alleged relevance to the issues in dispute.
 - 8.3 In the premises, paragraph 10 is otherwise not admitted.

8.4 For the avoidance of doubt, it is outside the statutory powers and functions of the FCA to override, alter, amend or expand the contract entered into between the Third and Fifth Defendants and their insureds or any of them. Consequently, the issues in this case are to be argued with reference to the terms and wordings of the relevant Policies and not otherwise.

C. The policy wordings and applicable law

9. As to paragraph 11:

9.1 It is admitted that the Third and Fifth Defendants wrote insurance policies on the wordings listed in Schedules 3 and 5 respectively, which provide coverage in accordance with the terms of those wordings (and not otherwise) and which have policy periods covering the period late 2019 and early 2020.

9.2 Save as aforesaid, no admissions are made as to paragraph 11.

10. Paragraph 12 is noted but contains no allegation to which it is necessary to plead.

11. Paragraphs 13 and 14 are noted.

12. Paragraph 15 is admitted.

13. As to paragraph 16:

13.1 The first sentence is admitted.

13.2 As to the second sentence:

(a) The first phrase is noted.

(b) The second phrase is noted as a statement of the understanding and intention of the FCA. The Third and Fifth Defendants are unable to make any admissions or denials, and reserve all their rights, in that regard.

D. COVID-19 and the public authority response to it

14. As to paragraph 17:

14.1 The first and second sentences are admitted. The same virus is also variously known as the “**Wuhan novel coronavirus (2019-nCoV)**” – see, for example, regulation 2(1) of the Health Protection (Coronavirus) Regulations 2020, SI 2020/129.

14.2 Paragraph 17 is otherwise denied or not admitted, as more fully set out herein below.

15. Save as set out in the sub-paragraphs below, paragraph 18 is admitted as a broadly accurate summary of some of the core events relating to Covid-19 and the response to it in UK. The Third and Fifth Defendants will refer to and rely upon the chronology that is being agreed between the parties as part of the agreed facts, and the documents underlying the matters set out at paragraph 18 (including the relevant legislation), for their full terms and true effect. Further:

15.1 The Third and Fifth Defendants should not be taken to accept that the events set out in paragraph 18 constitute a “*public authority response*” within the meaning of any particular policy wording. The correct legal characterisation of the various authorities’ actions and/or responses and their relevance to, for the purposes of, or with reference to, particular policy wordings are a matter for submissions. The Third and Fifth Defendants’ cases with reference to their respective relevant wordings are as pleaded herein below.

15.2 Save that Covid-19 was made notifiable in Wales on 6 March 2020 (and not 5 March 2020 as alleged), paragraph 18.7 is admitted.

15.3 As to paragraph 18.11:

- (a) It is admitted that the Chancellor of the Exchequer made a statement in the House of Commons as quoted in part from Hansard in paragraph 18.11.
- (b) If it is being alleged by the FCA, it is denied that there were any meetings on or before 17 March 2020 between the Economic Secretary to the Treasury (or any other member of the government) and anyone representing either the Third or the Fifth Defendants.
- (c) It is noted, as set out in footnote 2, that the FCA does not seek to prove that any particular matter was agreed between “*insurers*” and the Government. The Third and Fifth Defendants are proceeding accordingly. It is further denied, in so far as the FCA might seek to allege, that any general matter was agreed between either the Third or Fifth Defendants and the Government. If the FCA might seek so to allege, it is incumbent on the FCA to make the allegation forthwith without equivocation so that the Third and Fifth Defendants can have the opportunity to deal with and dispatch it.
- (d) As to the allegation in footnote 2 as to the purpose for which the FCA seeks to rely on paragraphs 18.21 to 18.23 (assuming that those references are intended to be to paragraphs 18.11 and 18.13):
 - (i) It is denied (if it is alleged) that the Government informed the Third or Fifth Defendants of the matters alleged or of any matters.
 - (ii) It is denied that it was incumbent on the Third or Fifth Defendants to inform the Government as alleged or at all.
 - (iii) The Third and Fifth Defendants are unable to admit or deny whether the Government wished to have, or would have availed itself of, an opportunity to take further steps as alleged.
 - (iv) It was a matter for the Government to take such action or make such statements as it thought fit in the discharge of its functions and

powers. Nothing done or not done by the Government can amend the Wordings or alter their legal meaning as between the Third and Fifth Defendants on the one hand and their respective Insureds on the other hand. The relevance of Government actions and statements within the Wordings is a matter of private contract between the Third and Fifth Defendants and their respective Insureds. They are otherwise irrelevant.

15.4 As to paragraph 18.12:

- (a) The Third and Fifth Defendants are unable to admit or deny whether Mr Sunak made the alleged statement. The Third and Fifth Defendants were not present at any meeting of the Treasury Committee on 18 March 2020 (or on any other date).
- (b) If Mr Sunak did make the alleged statement, it is denied that any agreement was concluded on 17 March 2020 (or any other date) between the Government and the Third or Fifth Defendants, whether as alleged or at all; or that the Third or Fifth Defendants or anyone or any entity representing them then (or at any other material time) said anything to, or received any written or oral communication from, whomever “we” in Mr Sunak’s alleged statement was.
- (c) It is denied, if it is being alleged, that any relevant insuring agreement to which the Third or Fifth Defendants are party was amended or varied so as to provide that the Third or Fifth Defendants would “*do the right thing*” (whatever that may mean). The Third and Fifth Defendants’ policies of insurance are binding contracts on the terms of the applicable Wordings (and related applicable policy terms and conditions) and not otherwise.

15.5 As to paragraph 18.13:

- (a) It is admitted that the extract quoted by the FCA appears in the COVID-19 Fact Sheet published by the UK Government on 18 March 2020. No admissions are made as to the accuracy of the Government's Fact Sheets.
- (b) The substance of the first bullet point, if intended to be relied upon by the FCA for any purpose, is denied. The UK Government had no standing or authority to make binding statements or express binding opinions as to the meaning and effect of private law contracts of insurance between the Third or Fifth Defendants and their respective Insureds; and its opinions as to the effect of its advice on coverage under those contracts are irrelevant.

16. As to paragraph 19:

16.1 It is admitted that the 21 and 26 March Regulations prohibited different conduct in relation to different categories of business at different times.

16.2 It is however denied that these Regulations did so "*in combination with Government guidance and announcements*" as alleged. The UK Government's guidance and announcements were not as a matter of law capable of prohibiting and did not prohibit any conduct.

16.3 Save as set out below, sub-paragraphs 19.1 to 19.7 are admitted:

- (a) The Third and Fifth Defendants adopt the Seventh Defendant's Defence in relation to paragraph 19.3 and repeat the same in relation to paragraph 19.5 *mutatis mutandis*.
- (b) As to paragraph 19.7, it is not admitted that by virtue of the announcement on 18 March 2020 referred to at paragraph 18.14, the UK Government was exercising any legal power, or indicating the future exercise of any legal power, to require schools to close. Insofar as relevant, the FCA is put to proof of the legal basis, if any, on which (i) the announcement as to school closures was made, and (ii) it is alleged that schools (of all relevant different

types) in fact closed. In the meantime, it is denied that the announcement operated so as legally to prevent or hinder schools from remaining open. The Third and Fifth Defendants will rely upon the Coronavirus Act 2020 and the 26 March Regulations for their full terms and true effect.

E. The Defendants' refusal of cover

17. As to paragraph 20:

17.1 As to the first sentence, it is admitted that the Third and Fifth Defendants have received and declined some claims under some policies written under their respective Wordings, but it is denied that the Third and Fifth Defendants have received and/or declined claims under all of the policy forms comprised within the Wordings.

17.2 It is admitted that the FCA disputes the refusal of certain claims as set out in the Particulars of Claim. Otherwise no admissions are made as to paragraph 20.

F. Prevalence of COVID-19 in the UK

18. Paragraph 21 is noted. It is denied that the FCA has a 'right' to rely on any expert evidence as asserted in paragraph 21. Pursuant to the order made by Mr Justice Butcher at the CMC on 16 June 2020, the FCA is not entitled to rely on any expert evidence at the trial listed to commence on 20 July 2020 in relation to the issue of the prevalence of Covid-19 in the UK.

19. As to paragraph 22:

19.1 The first sentence is admitted.

19.2 It is admitted that the relevant area may be stated as a radius of a certain number of miles from the insured premises.

- 19.3 It is denied that the meaning of the term 'vicinity' is to be determined in the manner alleged. Vicinity is a word which must be given its natural meaning in its contractual context.
- 19.4 The final sentence is only admitted in relation to the wordings of the Fifth Defendant which specify a number of miles from the insured premises. It is otherwise denied.
20. The Third and Fifth Defendants adopt the pleaded cases of the Fourth and Seventh Defendants in response to paragraphs 23 to 28. To the extent there are minor inconsistencies, they are not relevant for present purposes.

G. Assumed facts

21. As to paragraph 29, it is admitted that the FCA has proposed Assumed Fact Patterns at Annexe 2 to the Particulars of Claim. Paragraph 29 is otherwise noted but contains no allegations to which it is necessary to plead.
22. Paragraph 30 is noted but contains no allegations to which it is necessary to plead.

H. Policy intention

23. As to paragraph 31:
- 23.1 The first sentence is admitted and averred.
- 23.2 The second sentence is admitted.
- 23.3 The subjective intentions and views of the FCA and of the UK Government are not relevant or admissible. Statements made by the Chancellor of the Exchequer, the Economic Secretary to the Treasury and any and every other member of the government are equally irrelevant and inadmissible for the reason set out in the first sentence of paragraph 31.

24. Paragraph 32 is denied. The facts and matters stated do not alter the applicable principle, namely that each Wording is to be construed objectively within the admissible and relevant factual matrix and nothing else.

25. As to paragraph 33:

25.1 The relevance of the facts and matters stated in the first sentence is denied. The use of epidemic and pandemic exclusions by some insurers in some contexts, if and insofar as it occurs, is irrelevant. The issue between the Parties is as to the scope of cover created by the Wordings. It is irrelevant that Insurers did not include an epidemic or pandemic exclusion clause if, on the objective construction of the Wordings, the cover under the relevant Policies did not extend to such perils in the first place.

25.2 The relevance of the second sentence is denied. If Zurich2 and/or Hiscox1-2 and/or Hiscox 4 contain the alleged or any exclusions from cover, that fact does not form part of the factual matrix for any Policy underwritten by the Third or Fifth Defendants. It is simply irrelevant.

25.3 Pending clarification as to (i) who on behalf of each of the Third and Fifth Defendants is said to have made the alleged election, when or in what context, and (ii) the relevance of the alleged election to the objective construction of the Third and Fifth Defendants' Wordings as written, the final sentence is denied. It begs the issue as to the objective construction of the Third and Fifth Defendants' Wordings as in fact written.

25.4 Save as aforesaid, paragraph 33 is denied.

26. As to paragraph 34:

26.1 The first sentence is denied for the reason given in the second sentence, which is admitted and averred.

- 26.2 The admissible objective intention of the Third and Fifth Defendants not to cover pandemics (whatever that may mean) is to be found in the true construction of the Wordings themselves, not with reference to other terms used by other insurers in the context of other wordings which the FCA alleges might have been used but were not.
27. As to paragraph 35, it is not necessary and it is not appropriate. It is accordingly denied that the FCA may rely upon the so-called *contra proferentem* “rule”.

I. to M.

28. Insofar as sections I. to M. of the Particulars of Claim form part of the FCA’s case against the Third and Fifth Defendants, those sections are pleaded to sample wording by sample wording in the paragraphs which follow. It is appropriate to plead in this way, because the relevant clauses and the language used within the relevant clauses are to be read as a whole and in the immediate context and the relevant broader contexts. Responding to the Particulars of Claim paragraph by paragraph would preclude the proper approach to the sample wordings, because the FCA have pleaded to words or phrases in isolation from their context. Save to the extent admitted or not admitted in the paragraphs below and insofar as they relate to the FCA’s case against the Third and/or Fifth Defendants, paragraphs 36 to 52 are denied.

1) The Third Defendant’s sample wordings

Ecclesiastical Type 1.1 wording

29. The Ecclesiastical Type 1.1 wording (“**EIO1.1**”) is found in policies insuring businesses or charities (religious or otherwise) some of which were at some stage, and some of which were never, required to close pursuant to government legislation or regulations.
30. The Third Defendant’s case is set out with reference to the lead wording as identified in Schedule 3, namely ME857 – Parish Plus, which is a loss of income cover protecting churches.

EIO 1.1 Prevention of access – Non-damage extension clause

31. Section 3 – Loss of income, extension clause 3 – Prevention of access – Non-damage (“**EIO 1.1 Clause 3**”) defined the insurance being provided with reference both to what was covered and to what was not covered.
 - 31.1 With reference to what was covered, EIO 1.1 Clause 3 extended the insurance by section 3 to cover loss resulting from interruption of or interference with the Insured’s usual activities as a result of [1] access to or use of the **premises** being prevented or hindered by [2] any action of government police or a local authority (or, in some other wordings, Government Police or Local Authority) [3] due to an emergency which could endanger human life or neighbouring property.
 - 31.2 EIO 1.1 Clause 3 further stated, under the heading “what is not covered”, that the coverage did not extend to closure or restriction in the use of the **premises** due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease).
32. Some other versions of EIO 1.1 defined the insurance being provided in terms of business interruption and by way of a coverage provision and an exclusion corresponding materially to what was covered and what was not covered respectively in ME857. The “what is not covered” provision and the equivalent exclusion wordings are referred to hereafter as the “**Infectious Disease Carve-Out**”, without distinction.
33. On a true construction of EIO 1.1 Clause 3 in the context of the EIO 1.1 wording ME857 as a whole:
 - 33.1 The insured peril was interruption of or interference with the Insured’s usual activities as a result of government action due to an emergency which could endanger human life which action prevented or hindered access to or use of the premises.

- 33.2 Neither access to nor use of the premises is prevented unless it is rendered physically (in the case of access and use) or legally (in the case of use) impossible.
- 33.3 Use of and/or access to the premises is hindered where it is made more difficult or is inhibited, and whether the difficulty or inhibition applies to the Insured and/or to its employees (or office-holders) and/or to its parishioners, congregants or members (in the case of a church) or customers, clients or consumers (in the case of a charity, school, care home or heritage business).
34. Her Majesty's Government is the [G/g]overnment within the meaning of EIO 1.1 Clause 3. On its true construction and in the context of the wording in EIO1.1, in particular Clause 6, the competent local authority in Clause 3 includes Her Majesty's Government within the meaning of the Infectious Disease Carve-Out. Without prejudice to the generality of the foregoing:
- 34.1 The phrase "*the competent local authority*" in the Infectious Disease Carve-Out means any authority which is legally competent to make an order or issue advice affecting the locality of the insured premises. It extends to government, police, magistrates or a local authority (if so legally competent) and would have been so understood by a reasonable person.
- 34.2 The addition of the word "*competent*" before "*local authority*" in the Infectious Disease Carve-Out, where that word does not appear in the coverage provision, indicates that the phrase "*local authority*" is not being used in the identical sense in both contexts.
- 34.3 The true meaning is informed and reinforced by:
- (a) The factual matrix which was that (i) the Public Health (Control of Disease) Act 1984 as amended gave powers to the Secretary of State, including under sections 13 and 45C, to be exercised for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination; and under section 45I to

Justices of the Peace to make orders in relation to premises if infected or contaminated, including orders to close the premises; (ii) the Health Protection (Local Authority Powers) Regulations 2010 gave powers to local authorities including under Regulation 8; and (iii) the Civil Contingencies Act 2004 gave power to a Minister to order that a specified event or situation was to be treated as an emergency and to make emergency regulations as provided including under sections 20 to 22.

- (b) The contractual context supplied by Clause 6 of the EIO 1.1 wording. Clause 6 provided separate and specific cover in respect of any occurrence of a Specified Disease (as defined) being contracted by a person at the premises or within a radius of 25 miles of the premises which caused restrictions in the use of the premises “*on the order or advice of the competent local authority.*”

- 34.4 The Infectious Disease Carve-Out and Clause 6 were complementary to each other.
- 34.5 Clause 6 stated the coverage which the Third Defendant was prepared to provide in relation to Specified Diseases, including infectious diseases.
- 34.6 The Infectious Disease Carve-Out made clear that the coverage under clause 3 did not apply in relation to infectious diseases.
- 34.7 It was patently not the purpose of clause 3 to extend the coverage that the Third Defendant was prepared to provide in relation to Specified Diseases or to any other human infectious diseases. Such coverage was clearly the subject of clause 6 and only of clause 6.
- 34.8 The reference to “*the competent local authority*” in the Infectious Disease Carve-Out has the same meaning as the identical reference in clause 6, namely as set out in paragraph 34.1 above. It extends to government, police or a local authority (if so legally competent), as the relevant case may be. The use of the same phrase

is, as a matter of construction and obvious inferred intention, no coincidence in that the use of the phrase in clause 3 was obviously intended to coincide with the use of the same phrase in clause 6, and vice versa.

35. Each of the presence and/or the real risk of the presence of SARS-CoV-2 and/or of COVID-19 amounted to an emergency which could endanger human life from 12 March 2020 onwards. It is denied that there was an emergency which could endanger human life prior to that date.
36. Access to churches was never physically prevented or hindered by any action, instructions, guidelines, announcement or legislation of the government.
37. Use of churches was hindered by government advice, instructions, guidelines, announcements and legislation, which discouraged their use for public gatherings as from 23 March 2020.
38. From any relevant date when the use of the premises was hindered (and/or, if it was the case, the premises were closed) by any form of government advice, instructions, guidelines, announcements or legislation, such hindrance amounted to a restriction in use or (if paragraph 36 above is not correct) a closure due to the order or advice of the competent local authority within the meaning of the Infectious Disease Carve-Out. By reason of the Infectious Disease Carve-Out, therefore, it is specifically denied that clause 3 provides any cover to Insureds in relation to Covid-19.
 - 38.1 For the avoidance of doubt, the Third Defendant relies upon the Infectious Disease Carve-Out in relation to all other forms of insureds under different versions of the EIO 1.1 wording *mutatis mutandis*.
 - 38.2 Further for the avoidance of doubt, the EIO 1.1 wording ME869 was used for insureds undertaking the business of a residential care home or day care facility or similar. Neither access to nor the use of such premises was ever prevented or hindered but, if it was, the Infectious Disease Carve-Out applies.

39. On a true construction of EIO 1.1 Clause 3,
- 39.1 there is no cover at any time by reason of the Infectious Disease Carve-Out; alternatively
- 39.2 if the Infectious Disease Carve-Out does not apply, there is no cover for any loss prior to 23 March 2020 (being the earliest date when use of the premises was hindered by action of the government).

Ecclesiastical Type 1.2 wording

40. The Ecclesiastical Type 1.2 wording (“EIO1.2”) is found in policies insuring nurseries and schools and colleges, none of which was required by the 21 March Regulations or the 26 March Regulations or the Coronavirus Act 2020 or any other form of government action to close.
41. The Third Defendant’s case is set out with reference to the lead wording as identified in Schedule 3, namely ME886 – Nurseries, which is a business interruption cover protecting nursery schools.

EIO1.2 Prevention of access – Non-damage extension clause

42. Section 3 – Business Interruption, extension clause 1 – Prevention of access (“**EIO 1.2 Clause 1**”) insured against [1] loss as insured under section 3 [2] directly resulting from interruption of or interference with the Insured’s business at the premises [3] in consequence of [4] access to or use of the premises being prevented or hindered by [5] any action of Government Policy or Local Authority [6] due to an emergency which could endanger human life [7] excluding closure or restriction in the use of the premises [8] due to the order or advice of the competent local authority [9] as a result of an occurrence of an infectious disease.
43. Phrases [7] to [9] are referred to hereafter as the “**Infectious Disease Carve-Out**”.

44. Paragraphs 33 to 39 above are repeated *mutatis mutandis*.
45. Save to the extent set out above,
 - 45.1 Schedule 3 to the Particulars of Claim is denied as it applies to EIO 1.1 and EIO 1.2.
 - 45.2 Those paragraphs of the Particulars of Claim referred to in Schedule 3 as it applies to EIO 1.1 and EIO 1.2 and all paragraphs of the Particulars of Claim to which the foregoing paragraphs refer or on which they rely are denied.
46. In the premises, it is denied that the FCA is entitled to the general or particular declarations claimed against the Third Defendant.

2) The Fifth Defendant's sample wordings

MS Amlin Type 1 wording

47. The MS Amlin Type 1 wording ("**MSA1**") is found predominantly but not exclusively in policies insuring businesses which were never required to close pursuant to any government legislation or regulations.

MSA1 Additional Cover clause 1 – Action of competent authorities

48. Section 6 – Business Interruption, Additional Cover clause 1 – Action of competent authorities ("**MSA1 Clause 1**") insured against loss resulting from interruption or interference with the **business** following action by the police or other competent local, civil or military authority following a danger or disturbance in the vicinity of the premises where access will be prevented.
49. On a true construction of MSA1 Clause 1:
 - 49.1 The insured peril was [1] interruption of or interference with the business at the premises [2] following action by one or more of the identified entities [3] itself

following a danger or disturbance in the vicinity of the premises [4] which action prevented access to the premises.

49.2 The phrase “*where access will be prevented*” refers to:

- (a) the effect of the action by one or more of the identified entities following a qualifying danger, being
- (b) the prevention of access to the **premises**. In the light of paragraph 46.1 of the Particulars of Claim, this is understood to be common ground.

49.3 Access to the premises is to be distinguished from use of the premises. Prevention of access to the premises is to be distinguished from hindrance of access to the premises.

49.4 Access to the premises will only be prevented where access is not physically possible.

49.5 Access to the premises will not be prevented where (i) physical access is merely made harder or is hindered; and/or (ii) use of the premises is restricted or not legal.

50. Within the meaning of MSA1 Clause 1 “*competent local, civil or military authority*” includes each of Her Majesty’s Government and Parliament if and when exercising authority over the location of the premises.

51. A danger within the meaning of MSA1 Clause 1 requires an acute risk of harm from something specific happening in the immediate locality of the premises. There was no such danger anywhere in the UK prior to 12 March 2020. After 12 March 2020, it is a question of fact to be determined in each case having regard to the location of the insured premises whether and, if so, when there was first a danger in the vicinity of such premises.

52. It is noted (with reference to paragraph 46) that the FCA does not allege any prevention of access at any time prior to 16 March 2020.
53. “Following” means proximately caused by, alternatively having a significant causal connection with. In the premises:
 - 53.1 Any action pre-dating the existence of a danger in the vicinity of any insured’s premises was not “following” such danger.
 - 53.2 In relation to any action post-dating the existence of a danger in the vicinity of any insured’s premises, it is question of fact (on which the Insured bears the burden of proof) whether such action (even if it had the required effect of preventing access) was caused by such danger.
54. In so far as might be alleged, it is presently denied that anything done by any competent authority, whether by way of “*advice, instructions and/or announcements*” or legislation or otherwise followed a danger in the vicinity of any insured’s premises within the meaning of MSA1 Clause 1. Further or alternatively, nothing done by any competent authority, whether by way of “*advice, instructions and/or announcements*” or legislation or otherwise before, on and/or after 16 March 2020 prevented physical access to the **premises** of any Insured. Such action presented no physical impediment to accessing the **premises**.
55. If, contrary to the Fifth Defendant’s primary case, access could be prevented by legal impediment to the use of the premises for the business, the Fifth Defendant’s case is as follows.
56. Nothing done by any competent authority by way of “*advice, instructions and/or announcements*” before, on and/or after 16 March 2020 legally prevented access to any premises.

57. In the case of insured businesses falling within Part 1 or Part 2 of the Schedule to the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (“**the 21 March Regulations**”):

57.1 No action taken by the government at any time prior to the coming into force of the 21 March Regulations was action “*where access will be prevented*” within the meaning of MSA1 Clause 1.

57.2 The passing and/or coming into force of the 21 March Regulations

(a) was not action “*where access will be prevented*” as regards insured businesses falling within Part 1 of the Schedule, because access to the premises continued to be permitted save to the limited extent of the requirements set out in paragraph 2(1) of those Regulations;

(b) was action “*where access will be prevented*” as regards insured businesses falling within Part 2 of the Schedule.

58. In the case of insured businesses falling within any part of Schedule 2 to the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (“**the 26 March Regulations**”) but to which the 21 March Regulations did not already apply:

58.1 None of the action taken by the government at any time prior to the coming into force of the 26 March Regulations was action “*where access will be prevented*” within the meaning of MSA1 Clause 1.

58.2 The passing and/or coming in force of the 26 March Regulations

(a) was action where “*access will be prevented*” as regards insured businesses newly falling within Part 2 of the Schedule;

(b) was not action “*where access will be prevented*” as regards:

- (i) insured businesses (if any) newly falling within Part 1 of the Schedule, because access to the premises continued to be permitted save to the limited extent of the requirements set out in paragraph 2(1) of those Regulations;
 - (ii) insured businesses falling within Part 3 of the Schedule, because access to the premises continued to be expressly permitted for the purpose of carrying on the business;
 - (iii) insured businesses to which paragraph 5(1) of the Regulations applied, because access to the premises continued to be expressly permitted for the purpose of carrying on the business to the extent permitted by the exception to paragraph 5(1)(a).
59. In the case of insured businesses which did not fall within any part of the Schedule to any of the Regulations, none of the action taken by the government at any time was action “*where access will be prevented*” within the meaning of MSA1 Clause 1.
60. Further, and without prejudice to any of the foregoing and specifically as regards the period after the coming into force of the 26 March Regulations, the restrictions on movement contained in paragraph 6 of the 26 March Regulations did not prevent access to the premises of any business of a type not listed in Part 2 of Schedule 2, in that:
- 60.1 Paragraph 6(2)(f) expressly provided that a reasonable excuse for a person to leave the place where they are living included the need to travel for the purposes of work, where it was not reasonably possible for that person to work from the place where they were living.
 - 60.2 If working from home caused or would cause loss to the insured from not being able to undertake the business to the full extent permitted by law, then it was not reasonably possible for the work to be done from the place where the business owner and/or his, her or its employees were living.

60.3 In those circumstances, paragraph 6(2)(f) permitted the business owner and/or his, her or its employees to travel and gain access to the premises for the purpose of conducting the work which it was not reasonably possible to do from home. Consequently, in any case where loss was or would be suffered from working at home (i.e. in any case where the insured seeks to claim under the policy), access to the premises was not prevented.

60.4 If necessary and relevant (which is denied), in the case of businesses whose customers or clients would ordinarily attend the premises, they could still do so to the full extent permitted by (i) the general language of “reasonable excuse”, and/or (ii) the specific language of paragraph 6(2)(a) of the Regulations.

MSA1 Additional Cover clause 6 – Notifiable Disease

61. Section 6 – Business Interruption, Additional Cover clause 6 – Notifiable disease etc. (“**MSA1 Clause 6**”) insured against [1] **Consequential loss** (as defined) [2] as a result of interruption of or interference with the **business** [3] following (amongst other things), by (a)(iii), any **notifiable disease** (as defined) within a radius of twenty five miles of the **premises** but [4] subject to the condition that there was only cover for loss arising at those premises directly affected by such **notifiable disease**.

62. **Consequential loss** was defined as

“Loss resulting from interruption or interference with the **business** carried on by **you** at the **premises** in consequence of **damage** to property used by **you** at the **premises** for the purpose of the **business**.”

63. **Damage** was defined as

“Loss or destruction of or damage to the property insured as stated in the schedule and used by **you** in connection with the **business**.”

64. On a true construction of MSA1 Clause 6,

- 64.1 The insured peril was interruption of or interference with the **business** at the **premises** proximately caused by, alternatively having a significant causal connection with, any **notifiable disease** (otherwise to be treated under MSA1 equivalently to **damage**) within a twenty five mile radius of the **premises**.
- 64.2 The Insured is not entitled to any indemnity in respect of loss arising at any premises not directly affected by the notifiable disease within twenty five miles.
- 64.3 The Insured is not entitled to any indemnity in respect of loss arising at any premises if such loss is attributable to any notifiable disease beyond twenty five miles.
65. **Notifiable disease** was defined as
- “illness sustained by any person resulting from:
- ...
- b) any human infectious or contagious disease ... an outbreak of which the competent local authority has stipulated will be notified to them.”
66. By the Health Protection (Notification) (Amendment) Regulations 2020, SI 2020/237, made by the Secretary of State for Health at 6.15pm on 5 March 2020, laid before Parliament at 2.00pm on 6 March 2020 and coming into force immediately after they were made, the Secretary of State for Health and/or Parliament amended Schedule 1 to the Health Protection (Notification) Regulations 2010 so as to insert within Schedule 1 (Notifiable Diseases) COVID-19. An equivalent Regulation came into force as regards Wales on 6 March 2020.
67. COVID-19 is a human infectious and contagious disease an outbreak of which the Secretary of State and/or Parliament has stipulated must be notified to the proper officer of the relevant local authority or the Health Protection Agency pursuant to the Health Protection (Notification) Regulations 2010. In the context of the said Regulations and UK legislation concerning notifiable disease, a reasonable person would have

understood that, for the purposes of the notifiable disease provision in MSA1, reference to the competent local authority encompassed relevant authorities, including central government and/or parliament, competent to exercise and exercising authority in and over the area occupied by the relevant local government body. On that basis, it is admitted that COVID-19 is a notifiable disease within limb (b) of the definition set out in paragraph 65 above. Otherwise, it is denied.

68. As to the requirement in MSA1 Clause 6 of any **notifiable disease** within a radius of twenty five miles of the **premises**:

68.1 In every case, the area within 25 miles of the **premises** is to be identified by drawing a circle with a radius of 25 miles measured in a straight line, having the **premises** at the centre of the circle (the “**Relevant Area**”).

68.2 If the Insured proves the presence of at least one case of COVID-19 within the Relevant Area (as to the proof of which, see section F above), the requirement is met but, for coverage, the Insured must continue to prove that the interruption of or interference with the **business** was in consequence of and/or “*following*” the one case (or more) relied upon as satisfying the **notifiable disease** requirement.

68.3 The causal requirement necessary to be satisfied by the Insured is that of proximate causation, alternatively that there should be a looser but nevertheless significant causal connection between the case(s) of disease specifically within the Relevant Area and the interruption or interference. The Insured must prove that the case or cases of disease within the Relevant Area specifically caused the interruption of or interference with the business for which a claim to an indemnity is made. A general countrywide threat or risk of injury, or even the existence generally of a notifiable disease, attracting countrywide central government action with no reference to or reliance upon a specific case or cases of notifiable disease within the Relevant Area is not covered.

- 68.4 If the Insured does not prove the presence of at least one case of COVID-19 within the Relevant Area, the requirement is not met.
69. The Insured has no claim for any interruption of or interference with the **business** incurred prior to (i) 6.16pm on 5 March 2020 (in England), alternatively 6 March 2020 (in Wales), when COVID-19 became a notifiable disease; and/or (ii) the date when the Insured proves that there was first at least one confirmed case of COVID-19 within the Relevant Area.
70. As regards any interruption of or interference with the **business** incurred after that date:
- 70.1 The Fifth Defendant's case on causation is set out at section N. below.
- 70.2 Further or alternatively, and specifically with regard to MSA1 Clause 6, the Insured has no claim insofar as the interruption of or interference with the **business**:
- (a) Was caused by action taken by the Insured itself or the public, where such action was (i) taken in ignorance of and/or not as a result of any confirmed cases of COVID-19 within the Relevant Area and/or (ii) not taken pursuant to government guidance or requirement attributable specifically to at least one confirmed case of COVID-19 within the Relevant Area.
 - (b) Was caused by action taken by the Insured or the public pursuant to government guidance or requirement, where such government guidance or requirement pre-dated the first confirmed case of COVID-19 in the Relevant Area.
 - (c) Was not caused by at least one confirmed case of COVID-19 in the Relevant Area.
71. Save to the extent set out above,

- 71.1 Schedule 5 to the Particulars of Claim is denied as it applies to MSA1.
 - 71.2 Those paragraphs of the Particulars of Claim referred to in Schedule 5 as it applies to MSA1 and all paragraphs of the Particulars of Claim to which the foregoing paragraphs refer or on which they rely are denied.
72. In the premises, it is denied that the FCA is entitled to the general or particular declarations claimed with reference to MSA1.

MS Amlin Type 2 wording

73. The MS Amlin Type 2 wording ("**MSA2**") is found in policies insuring a range of businesses
- 73.1 some of which were not required to close pursuant to government legislation or regulations; and
 - 73.2 some of which were required to close pursuant to government legislation or regulations – in some cases pursuant to the 21 March Regulations and in other cases pursuant to the 26 March Regulations.

MSA2 Additional Cover clause 8 – Prevention of access – non damage

74. Section A sub-section 2 – Business Interruption, Additional Cover clause 8 – Prevention of access – non damage ("**MSA2 Clause 8**") insured against financial losses and other items specified in the policy schedule [1] resulting solely and directly from [2] interruption to the **business** caused by [3] an incident within a one mile radius of the insured's premises [4] which results in a denial of or hindrance in access to the premises during the period of insurance, [5] imposed by any civil or statutory authority or by order of the government or any public authority, [6] for more than 24 hours.

75. On a true construction of MSA2 Clause 8:

- 75.1 The insured peril was interruption to the business caused by an incident within the specified radius of the premises having the specified effect for the specified period.
- 75.2 The only loss recoverable is that which is caused solely and directly, that is proximately and only, by the insured peril as defined above.
- 75.3 Interruption to the business requires a complete cessation of the business conducted at the premises. It is distinct from mere interference with the business conducted at the premises.
- 75.4 The complete cessation of the insured business must itself have been caused by an incident, meaning a distinct and specific happening,
 - (a) which must be proved to have taken place within a radius of one mile from the premises, and
 - (b) which must have resulted in a government / public authority order, or civil / statutory authority imposition (as the case may be) having the effect of denying or hindering physical access to the premises.
- 75.5 An incident is not a mere state of affairs and it is not something which forms part of the generality of a situation to which the government might respond: the distinct and specific happening must specifically cause the qualifying authority to deny or hinder physical access to the premises.
- 75.6 Access to the premises is to be distinguished from use of the premises. Denial of or hindrance in access to the premises will only occur where physical access is impossible or inhibited, but not where the mere use of the premises is legally restricted or proscribed.

- 75.7 Even if that is wrong, the necessity for any denial of or hindrance in access to be imposed by civil or statutory authority or by order of the government or any public authority means that nothing short of legislation or legally enforceable requirement could suffice.
76. None of the government's legislation (nor, if relevant, guidance, advice, exhortation, encouragement and/or instructions) had the effect of denying or hindering physical access.
77. If (contrary to paragraphs 75.6 and 76 above) the application of the 21 March and/or 26 March Regulations was capable of denying or hindering access to the insured premises (where the effect, if any, of such Regulations depends on the nature of the insured's business conducted from the insured premises), neither the impositions in the said Regulations nor such denial of or hindrance in access were the result of an incident within a one mile radius of the premises.
78. Neither the pandemic nor the presence of a person having COVID-19 within one mile of the premises constitutes an incident.
79. In any event, the clause requires that there must be loss resulting solely and directly from an interruption to the business caused by an incident within a one-mile radius of the premises. This requires (i) a complete cessation of the business, which is (ii) proximately caused by (iii) an incident within a one-mile radius of the insured premises. The FCA has not alleged the occurrence of any incident (let alone within a one mile radius) having any such effect on any insured business.

MSA2 Additional Cover clause 6 – Notifiable Disease

80. Section A sub-section 2 – Business Interruption, Additional Cover clause 6 – Notifiable disease etc. ("**MSA2 Clause 6**") insured against **Consequential loss** (as defined) as a result of interruption of or interference with the **business** following (amongst other things), by (a)(iii), any **notifiable disease** (as defined) within a radius of twenty five miles of the **premises**.

81. **Consequential loss** was defined as

“Loss resulting from interruption of or interference with the **business** carried on by **you** at the **premises** following **damage** to property used by **you** at the **premises** for the purpose of the **business**.”

82. Paragraphs 63 to 70 above are repeated *mutatis mutandis*.

83. Save to the extent set out above,

83.1 Schedule 5 to the Particulars of Claim is denied as it applies to MSA2.

83.2 Those paragraphs of the Particulars of Claim referred to in Schedule 5 as it applies to MSA2 and all paragraphs of the Particulars of Claim to which the foregoing paragraphs refer or on which they rely are denied.

84. In the premises, it is denied that the FCA is entitled to the general or particular declarations claimed with reference to MSA2.

MS Amlin Type 3 wording

85. The MS Amlin Type 3 wording (“**MSA3**”) is found only in policies insuring businesses operating as forges (i.e. smithies), being business of a type which was never required to close pursuant to any government legislation or regulations. Footnote 11 on page 31 of the Particulars of Claim is admitted by the Fifth Defendant in relation to the MSA3 wording. Within the categorisations adopted by the FCA, the MSA3 wording was only found in policies insuring businesses within category 5.

MSA3 Additional Cover clause 1 – Prevention of access

86. Section 2 – Business Interruption, Additional Cover clause 1 – Prevention of access (“**MSA3 Clause 1**”) insured against loss resulting from interruption or interference with the **business** because of action by a competent public authority following threat of or

risk of injury in the vicinity of the premises which will prevent or hinder use of the premises or access to them.

87. Although MSA3 Clause 1 did not use the capitalised term “Injury”, the word injury in MSA3 Clause 1 was intended to carry the meaning given to the defined term on page 12 of the policy wording, namely “*Bodily injury, death, disease, illness or shock.*” COVID-19 therefore fell within the meaning of the word “injury” in MSA3 Clause 1.

88. On a true construction of MSA3 Clause 1:

88.1 The insured peril was [1] interruption or interference with the business at the premises [2] because of action by a competent public authority [3] following threat or risk of injury in the vicinity of the premises [4] which will prevent or hinder use of the premises or access to them.

88.2 The threat or risk of injury must be a specific threat or risk of injury referable specifically to the vicinity of the premises, and proximately causing or giving rise to specific action by a competent public authority having the effect of preventing or hindering the use of the premises or access to them.

88.3 A general countrywide threat or risk of injury attracting indiscriminate central government action which has no specific reference to the vicinity or to anything specifically happening in the vicinity is not covered.

88.4 Neither access to nor use of the premises is prevented unless it is rendered physically (in the case of access and use) or legally (in the case of use) impossible.

88.5 Use of and/or access to the premises is hindered where it is made more difficult or is inhibited, and whether the difficulty or inhibition applies to the Insured and/or to its employees and/or to its customers.

89. There was no threat or risk of injury anywhere in the UK prior to 12 March 2020. After 12 March 2020, it is a question of fact to be determined in each case having regard to

the location of the insured premises whether and, if so, when there was first a specific threat or risk of injury specific to the vicinity of such premises.

90. It is noted (with reference to paragraph 46) that the FCA does not allege any prevention or hindrance of access or use at any time prior to 16 March 2020.
91. “Following” means proximately caused by, alternatively having a significant causal connection with. In the premises:
 - 91.1 Any action pre-dating the existence of a threat or risk of injury in the vicinity of any insured’s premises was not “following” such threat or risk of injury.
 - 91.2 In relation to any action post-dating the existence of a threat or risk of injury in the vicinity of any insured’s premises, it is question of fact (on which the Insured bears the burden of proof) whether such action (even if it had the required effect) was caused by such threat or risk of injury.
92. While each of Her Majesty’s Government and Parliament is a competent public authority within the meaning of MSA3 Clause 1, they neither (i) took action following any specific threat or risk of injury in the vicinity of any relevant premises nor (ii) took action which had the effect of preventing or hindering the use of the premises or access to them by any Insured operating a business of the type covered under MSA3.
93. Further or alternatively, the determination of the question whether or not there has been any loss resulting from interruption of or interference with the business of any insured forge because of any qualifying action of any competent public authority is one of fact. To the best of the Fifth Defendant’s knowledge and belief, it has received no claims under any of its Forge policies.
94. The Fifth Defendant’s case as to causation of loss (or the lack thereof) is set out in section N below.
95. Save to the extent set out above,

- 95.1 Schedule 5 to the Particulars of Claim is denied as it applies to MSA3.
- 95.2 It is further specifically denied that the appropriate declarations could ever be in the terms set out in Schedule 5 with reference to MSAmIn3, where the terms of those declarations repeat those sought in relation to MSAmIn2.
- 95.3 Those paragraphs of the Particulars of Claim referred to in Schedule 5 as it applies to MSA3 and all paragraphs of the Particulars of Claim to which the foregoing paragraphs refer or on which they rely are denied.
96. In the premises, it is denied that the FCA is entitled to the general or particular declarations claimed with reference to MSA3.

N. Causation

97. The Third and Fifth Defendants are only liable for loss proximately caused by the insured peril under the relevant Policy. They are not liable for any loss which is not proximately caused by the insured peril. The insured peril in each case is defined and established by the policy wording entered into when the contract of insurance was made. The following paragraphs are without prejudice to all the foregoing and proceed on the assumption of an established insured peril.
98. Loss cannot have been (proximately) caused by an insured peril if such loss was not factually caused by it. Under all relevant Policies, the “but for” test is a necessary but not sufficient condition to establish causation.
99. The “but for” language in the applicable trends clauses restates these ordinary principles of causation which apply even in the absence of such clauses.
100. Without prejudice to the burden of proof, which rests on the FCA (and the Insured in every case) to prove that the losses claimed were caused by the insured peril, including that such losses would not have occurred “but for” the insured peril:

- 100.1 Covid-19 nationally and internationally was a proximate cause of all losses suffered. If it was the sole proximate cause, there is no cover for any Insured under any of the relevant policies because Covid-19 *per se* is not an insured peril.
- 100.2 The response to Covid-19 of individuals (whether consumers, employees, business owners or members of society) and businesses, including (i) the adverse impact of such response on economic activity and public confidence and/or (ii) the circumstances or decisions of businesses on which a given Insured is dependent for the conduct of the insured business, is likely to have been a proximate cause of at least a material proportion of the losses suffered by many, possibly most, Insureds in most situations, regardless of any relevant government action of any kind. If and insofar as such individual (and non-governmental) response was either the sole proximate cause or a concurrent interdependent proximate cause with Covid-19 itself, there is no cover for any Insured under any of the relevant policies because individual response to Covid-19 which would have occurred regardless of any relevant government action is not an insured peril.
- 100.3 With specific reference to MSA1 Clause 6 and MSA2 Clause 6, illness sustained by any person from Covid-19 after 5 March 2020 within a 25 mile radius of the insured premises was a factual cause and, if so, a proximate cause only to the extent of the business interruption loss (if any) which would not have occurred but for such illness sustained.
- 100.4 With specific reference to the remainder of the relevant coverage clauses, government action / order of the defined type (as precisely defined in relation to each relevant wording below) was a factual cause and, if so, a proximate cause only to the extent of the business interruption loss (if any) which would not have occurred but for such defined government action / order.
- 100.5 Under MSA2 Clause 8, the policy only responds to loss which the Insured can prove was solely and directly caused by the insured peril.

101. The issue of what, if any, business interruption loss was factually and proximately caused by an insured peril can only be determined on the facts of each individual case, having regard to all the facts considered in the context of, and with reference to, the relevant policy wording.
102. Paragraph 53.1 is denied. None of the relevant Policies underwritten by the Third and Fifth Defendants insures against the peril identified in paragraph 53.1. The insured perils in the policies of the Third and Fifth Defendants are narrowly circumscribed and cover localised events.
103. Paragraph 53.2 is denied. The correct approach in law is to identify and isolate the loss (if any) proximately caused by the insured peril.
104. As to paragraph 54.1, if the Insured would have suffered the same (or some) loss but for the local disease, emergency or public authority action (and whether by reason of the disease, emergency or public authority action being broader than local or for some other reason), the loss which the Insured would in any event have suffered has not been caused by the insured peril in the policy and/or is not recoverable under the policy. Save as aforesaid and as set out above in relation to the sample wordings, paragraph 54.1 is denied.
105. Paragraph 54.2 is denied. It begs the issue as to the meaning and effect of the Wordings as written.
106. Paragraph 54.3 is denied. The cover created by the language in each case is to be identified by construing and applying the whole of the language in its full context.
107. Paragraph 55 is denied. It amounts to no more than the assertion that it would be absurd to restrict the Insured's recovery to loss proximately caused by the insured peril. The Third and the Fifth Defendants plead further as to the correct counterfactuals to be applied on a proper construction of the relevant Policies below.
108. Paragraph 56 is denied.

108.1 Whether, as a matter of the proper construction of the relevant Policy, the facts and matters set out at paragraph 53.2(c) and (d) are to be treated separately and distinctly for causation purposes depends on the identification of the insured peril in each relevant coverage extension. The insured peril may require dividing lines to be drawn, which would not otherwise need to be drawn.

108.2 In any event, there were as a matter of fact multiple national and local responses to COVID-19 which were from different bodies and of different natures and legal effects, and some of which resulted from the public response to COVID-19 irrespective of government or local authority, action or advice. It is specifically denied that Her Majesty's Government ever devised or implemented what can be described as an indivisible and interlinked strategy and/or package of national measures.

108.3 As to sub-paragraphs 56.1 to 56.8:

- (a) It is admitted that the Prime Minister's statement on 16 March 2020 addressed the facts and matters set out in sub-paragraph 56.1 (amongst others).
- (b) As to sub-paragraph 56.2, paragraphs 15.3 to 15.5 above are repeated.
- (c) It is admitted that in his statements on 20 March 2020 and 23 March 2020, the Prime Minister addressed the facts and matters set out in sub-paragraphs 56.3 and 56.4 respectively (amongst others). For the avoidance of doubt, the relevance of the fact that the Government addressed various matters compendiously in its speeches or statements is denied.
- (d) As to sub-paragraph 56.5, it is admitted that the 26 March Regulations contained orders in relation to business closure and orders in relation to restrictions on movement. Sub-paragraph 56.6 is admitted. It is irrelevant that matters relating to business closure and restrictions on movement were addressed in the same piece of legislation, to the extent they were.

(e) As to sub-paragraph 56.7, save that no admissions are made as to the basis on which any individual school decided to close, the facts and matters set out in the second and third sentences are admitted. It is further admitted that not all businesses were required to close. Save as aforesaid, the Third and Fifth Defendants are unable to admit or deny.

(f) Save as aforesaid, sub-paragraphs 56.1 to 56.8 are denied.

109. Paragraph 57 is denied. By contrast with concurrent interdependent causes, concurrent independent “causes” arise where there are two or more causes each of which is sufficient on its own to bring about the loss in question. In these circumstances, the Insured cannot establish that the insured peril is a factual cause of the loss as the loss in question would have occurred in any event. Further or alternatively and specifically with reference to MSA 2 Clause 8, where there is only cover for losses resulting solely and directly from the insured peril, losses caused by concurrent causes of any kind are outside the scope of the cover and therefore irrecoverable.

110. Paragraph 58 is denied. The principle of law being referred to only applies in cases of concurrent interdependent causes, each of which is both a factual and proximate cause of the loss, and not in cases of concurrent independent “causes”. Paragraph 109 above is repeated. Specifically as to the last sentence, it would be contrary to the parties’ intentions and legal principle to read the causation language in the Wordings as requiring the Insurers to indemnify for loss not proximately caused by the insured peril(s).

111. As to paragraphs 59 and 60:

111.1 The relevant test so far as factual causation and the counter-factual is concerned is the “but for” test. The question is: but for the insured peril, would the loss have occurred? If and to the extent yes, no recovery. If and to the extent no, factual causation is established but it still remains to be proved that the specific causal requirements for recovery are satisfied.

111.2 Without prejudice to the foregoing, the words and phrases “resulting from”, “which results in”, “as a result of”, “caused by”, “due to”, “in consequence of”, “because of” as used in the relevant Policies underwritten by the Third and Fifth Defendants are capable of importing proximate causation but whether they do so depends on the precise context in which they are used.

111.3 Paragraph 60 is denied. Paragraph 68.3 above is repeated. The causal connector “following” still requires, at a minimum, the application and satisfaction of the “but for” test.

111.4 Save as aforesaid, paragraphs 59 and 60 are denied.

112. In the paragraphs below, the Third and Fifth Defendants respectively plead separately to each Wording relied upon by the FCA without prejudice to their case above in relation to coverage and on the footing that the Insured can prove the relevant insured peril. Save to the extent admitted or not admitted in the paragraphs below, and insofar as they relate to the FCA’s case against the Third and/or Fifth Defendants, paragraphs 62 to 79 are denied. The Third and Fifth Defendants do not plead to those paragraphs insofar as they do not relate to the FCA’s case against them.

MS Amlin Type 1 wording: MSA1 Clause 6

113. On a true construction of MSA1 Clause 6:

113.1 The Fifth Defendant agreed to indemnify against loss proximately caused by interruption of or interference with the business following illness resulting from notifiable disease sustained by any person within a twenty five mile radius of the premises.

113.2 The Fifth Defendant did not agree to indemnify against loss which would have been suffered by the Insured even if there had been no illness resulting from notifiable disease sustained by any person within a twenty five mile radius of the premises.

114. The Insured's loss was not proximately caused by the insured peril if and to the extent that the Insured would have suffered the same loss but for illness resulting from notifiable disease sustained by any person within the Relevant Area – that is, on a counterfactual where no person sustained illness resulting from a notifiable disease within the Relevant Area, but all other factors remain unchanged.
115. For the avoidance of doubt, and without prejudice to the burden of proof which is on the Insured, as part of this counterfactual:
- 115.1 SARS-CoV-2 and/or Covid-19 continued to be present and to cause illness and/or the risk of illness to people outside the Relevant Area; and/or
- 115.2 All advice and/or instructions and/or legislation of the Government (and other authorities) in response to Covid-19 continued to take effect both inside and outside the 25 mile radius, or, alternatively, outside the 25 mile radius; and/or
- 115.3 There would still have been adverse (economic) impact on businesses and other organisations of SARS-CoV-2 and/or of Covid-19 (including as a result of their effects on public and/or consumer behaviour, supply chain disruptions, reduction in tourism and travel restrictions, spontaneous business decisions to close etc.):
- (a) in the period prior to (or after the lifting of) any advice and/or instructions and/or legislation of the Government (or other authorities) – as in fact has occurred and is likely to occur in due course; and/or
- (b) both within and outside the vicinity of the premises for as long as Covid-19 remained or remains in the UK (and/or globally) even if the Government (or other authorities) had not issued or imposed any of the advice and/or instructions and/or legislation which they did.

For the avoidance of doubt, the extent of the adverse economic impact on the business of any particular Insured is not a matter for determination in these proceedings.

116. Further or alternatively, on a true construction of MSA1:

116.1 The basis of settlement provisions set out in Annex 1 (including the so-called trends clause in the definition of “**Standard Turnover**”) apply to claims under MSA1 Clause 6, with “damage” being read as “peril insured against”. Consequently, claims made by Insureds are to be quantified by reference to the basis of settlement provisions.

116.2 The trends clause (set out in the definition of “**Standard turnover**”) required, as a matter of agreement between the parties, that: (i) a “but for” approach to causation be adopted in the assessment of the Insured’s losses; and (ii) consequently, that the Insured’s recoverable losses be assessed by reference to the position the Insured would have been in but for the insured peril (or had the insured peril not occurred).

116.3 There is nothing in the trends clause that requires the trend or variation or special/other circumstance or otherwise to be something extraneous to the event or state of affairs which gives rise to the insured peril; the only requirement is that they be independent of the insured peril whether or not independent of the cause of the insured peril.

116.4 The same counterfactual set out at paragraph 114 above is applicable when adjusting the Insured’s losses pursuant to the trends clause.

MS Amlin Type 1 wording: MSA1 Clause 1

117. On a true construction of MSA1 Clause 1:

117.1 The Fifth Defendant agreed to indemnify against loss proximately caused by interruption of or interference with the business at the premises following defined action by the competent civil authority (viz. defined as action following a danger in the vicinity of the premises) having a specified effect (viz. where access will be prevented).

- 117.2 The Fifth Defendant did not agree to indemnify against loss which would have been suffered by the Insured even if there had been no such defined action.
118. The Insured's loss whether in whole or in part was not proximately caused by the insured peril if and to the extent that the Insured would have suffered the same loss but for the defined action – that is, on a counterfactual where the defined action by the Government, whereby access to the premises was prevented, had not occurred, but all other factors remain unchanged.
119. For the avoidance of doubt, and without prejudice to the burden of proof which is on the Insured, as part of this counterfactual it is to be assumed that:
- 119.1 All other Government action (and action by any other relevant authorities) continued to take effect; and/or
- 119.2 There continued to be a danger in the vicinity and/or outside the vicinity of the insured premises from SARS-CoV-2 and/or Covid-19; and/or
- 119.3 SARS-CoV-2 and/or Covid-19 continued to be present (i) both within and outside the vicinity; alternatively (ii) only outside the vicinity; and/or
- 119.4 The adverse (economic) impact on businesses and other organisations of SARS-CoV-2 and/or of Covid-19 was as set out at paragraph 115.3 above.
120. Further or alternatively, paragraph 116 above as to the applicability and effect of the basis of settlements provisions and the trends clause in MSA1 is repeated *mutatis mutandis*, save that the counterfactual to be applied is as set out at paragraph 118 above.

MS Amlin Type 2 wording: MSA2 Clause 6

121. Paragraphs 113 to 115 above are repeated *mutatis mutandis*.

122. Further or alternatively,

122.1 In relation to ADA672-20190601 Retail (Instant Underwriting) and ADA626-20190601 Leisure (Instant Underwriting) policies included in MSA2, paragraph 116 above is repeated *mutatis mutandis*.

122.2 As for the ADA627-20191024 Office and Surgery (Instant Underwriting) policy also included in MSA2, the basis of settlement provisions set out in Annex 1 (including the so-called trends clause in the “*basis of settlement A – Loss of income*” section) apply to MSA2 Clause 6, with “damage” being read as “peril insured against”. Consequently, claims made by Insureds are to be quantified by reference to the basis of settlement provisions and paragraphs 116.2 to 116.4 above are repeated *mutatis mutandis*.

MS Amlin Type 2 wording: MSA2 Clause 8

123. On a true construction of MSA2 Clause 8:

123.1 The Fifth Defendant agreed to indemnify against loss solely and directly resulting from interruption to the business caused by an incident within a one mile radius of the premises which results in a denial or hindrance in access to the premises imposed by order of the government.

123.2 The Fifth Defendant did not agree to indemnify in respect of any loss otherwise proximately or concurrently caused.

124. The Insured’s loss whether in whole or in part was not proximately caused by the insured peril if the Insured would have suffered the same loss but for such an incident and/or such government order – that is, on a counterfactual where there had been no incident within a one mile radius of the premises and/or no government order resulting from any such incident, but all other factors remain unchanged.

125. For the avoidance of doubt, and without prejudice to the burden of proof which is on the Insured, as part of this counterfactual it is to be assumed that:
- 125.1 SARS-CoV-2 and/or Covid-19 continued to be present (i) both within and outside the one mile radius; alternatively (ii) only outside that area; and/or
- 125.2 All action by the Government (or any other relevant authorities), other than such as amounted to orders denying or hindering access to the insured premises resulting from the proved incident within a one mile radius of the premises, continued to take effect both within and outside the one mile radius of the premises; and/or
- 125.3 The adverse (economic) impact on businesses and other organisations of SARS-CoV-2 and/or of Covid-19 was as set out at paragraph 115.3 above.
126. Further or alternatively, paragraph 122 above as to the applicability and effect of the basis of settlements provisions and the trends clause in MSA2 are repeated *mutatis mutandis*, save that the counterfactual to be applied is as set out at paragraph 124 above.

MS Amlin Type 3 wording: MSA3 Clause 1

127. On a true construction of MSA3 Clause 1:
- 127.1 The Fifth Defendant agreed to indemnify against loss proximately caused by interruption of or interference with the business because of defined action by the competent public authority (*viz.* defined as action following threat or risk of injury in the vicinity of the premises) having a specified effect (*viz.* which will prevent or hinder use of or access to the premises).
- 127.2 The Fifth Defendant did not agree to indemnify against loss which would have been suffered by the Insured even if there had been no such defined action.

128. The Insured's loss whether in whole or in part was not proximately caused by the insured peril if and to the extent that the Insured would have suffered the same loss but for the defined action – that is, on a counterfactual where the defined action by the Government, whereby use of or access to the premises was prevented or hindered, had not occurred, but all other factors remain unchanged.
129. For the avoidance of doubt, and without prejudice to the burden of proof which is on the Insured, as part of this counterfactual it is to be assumed that:
- 129.1 All other Government action continued to take effect; and/or
- 129.2 There continued to be a threat or risk of injury in the vicinity and/or outside the vicinity of the insured premises from SARS-CoV-2 and/or Covid-19; and/or
- 129.3 SARS-CoV-2 and/or Covid-19 continued to be present (i) both within and outside the vicinity; alternatively (ii) only outside the vicinity; and/or
- 129.4 The adverse (economic) impact on businesses and other organisations of SARS-CoV-2 and/or of Covid-19 was as set out at paragraph 115.3 above.
130. Further or alternatively, the basis of settlement provisions set out in Annex 1 (including the so-called trends clause in the bracketed provision) apply to claims under MSA3 Clause 1, with "damage" being read as "peril insured against". Consequently, claims made by Insureds are to be quantified by reference to the basis of settlement provisions and paragraphs 116.2 to 116.4 above are repeated *mutatis mutandis*, save that the counterfactual to be applied is as set out in paragraph 128 above.

Ecclesiastical Denial of Access Type 1.1 and 1.2 wording

131. EIO1.1 Clause 3 and EIO1.2 Clause 1 insured against loss (directly) resulting from interruption of or interference with the Insured's usual activities/business at the premises [as a result of] [or in consequence of] access to or use of the premises being

prevented or hindered by action of [G/g]overnment, [P/p]olice or [L/l]ocal [A/a]uthority due to an emergency which could endanger human life.

132. On a true construction of EIO1.1 Clause 3 and EIO1.2 Clause 1:

132.1 The Third Defendant agreed to indemnify against loss proximately caused by interruption of or interference with the insured's usual activities/business at the premises proximately caused by defined action of the government or other identified authorities (*viz.* defined as action due to an emergency which could endanger human life) having the specified effect (*viz.* preventing or hindering the access to or use of the premises).

132.2 The Third Defendant did not agree to indemnify against loss which would have been suffered by the Insured even if there had been no such defined action.

133. The Insured's loss whether in whole or in part was not proximately caused by the insured peril if and to the extent that the Insured would have suffered the same loss but for the defined action – that is, on a counterfactual where the defined action, whereby access to or use of the premises was prevented or hindered, had not occurred, but all other factors remain unchanged.

134. For the avoidance of doubt, and without prejudice to the burden of proof which is on the Insured, as part of this counterfactual it is to be assumed that:

134.1 All other Government action continued to take effect; and/or

134.2 There continued to be an emergency which could endanger human life from SARS-CoV-2 and/or Covid-19; and/or

134.3 SARS-CoV-2 and/or Covid-19 continued to be present and to cause illness and the risk of illness; and/or

134.4 The adverse (economic) impact on businesses and other organisations of SARS-CoV-2 and/or of Covid-19 was as set out at paragraph 115.3 above.

135. Further or alternatively, on a true construction of EIO 1.1 and EIO 1.2:

135.1 The basis of settlement provisions (including the so-called trends clauses) set out in Annex 2 apply to claims under EIO 1.1 Clause 3 and EIO1.2 Clause 1, with “damage” being read as “peril insured against”. Consequently, claims made by insureds are to be quantified by reference to the basis of settlement provisions and paragraphs 116.2 to 116.3 above are repeated *mutatis mutandis*.

135.2 The same counterfactual set out at paragraph 133 above is applicable when adjusting the Insured’s losses pursuant to the applicable trends clauses.

O. Cover

136. As to paragraph 80:

136.1 Paragraphs 80.1 to 80.4 are denied so far as they concern the Third and Fifth Defendants for the reasons set out herein above.

136.2 Paragraph 80.5 is noted and averred.

P. Declarations

137. Save that COVID-19 became notifiable on 6 March 2020 in Wales, the contents of declaration 1) are admitted.

138. In the premises and save as expressly admitted or not admitted above, it is denied that the declarations sought by the FCA against the Third and Fifth Defendants should be granted.

Conclusion

139. Save as expressly admitted or not admitted in this Defence and save that the last sentence of paragraph 50 is noted and averred, each and every allegation in the Particulars of Claim which is relied upon by the FCA as part of, or as relevant to, its case against the Third and/or Fifth Defendants is denied as if the same were each set out and separately denied.

140. In the premises, it is denied that the FCA is entitled to declarations in the terms sought against the Third and Fifth Defendants.

7 King’s Bench Walk
Temple
London EC4Y 7DS

Gavin Kealey QC
Andrew Wales QC
Sushma Ananda
Henry Moore

Statement of Truth

The Third Defendant believes that the facts stated in this Defence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am duly authorised by the Third Defendant to sign this Defence.

DocuSigned by:
Mark Hews
Signed
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Date23 June 2020

Name (Printed) Mark Christopher John Hews
Senior Office or Position heldChief Executive Officer
ECCLESIASTICAL INSURANCE OFFICE PLC

Statement of Truth

The Fifth Defendant believes that the facts stated in this Defence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am duly authorised by the Fifth Defendant to sign this Defence.

Signed.....

Date23 June 2020

Name (Printed) Frederick Christopher Foreman

Senior Office or Position held General Counsel and Company Secretary

MS AMLIN UNDERWRITING LIMITED

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Ref: CJW/ EIG002-1488639

Solicitors for the Third and Fifth Defendants

Annex 1: basis of settlement provisions in Fifth Defendant's wordings

Policy wording (lead wording asterisked)	Basis of settlement provision	Relevant definitions
Type 1		
*ADA628-20190601 Commercial Combined (Instant Underwriting)	Policy Section 6 (Business interruption – Optional), Insuring clause, basis of settlement provisions (pp. 60-61)	General Definitions, including definition of “ <i>Damage</i> ” (p. 12) Policy Section 6 (Business interruption – Optional), Additional definitions on pp. 58-59, including definition of “ <i>Standard turnover</i> ” (i.e. the trends clause)
Type 2		
*ADA672-20190601 Retail (Instant Underwriting)	Policy Section A – Automatic cover, Sub-section 2 – Business interruption, What is covered, basis of settlement provisions (pp. 44-45)	General Definitions, including definition of “ <i>Damage</i> ” (p. 12) Policy Section A – Automatic cover, Sub-section 2 – Business interruption, Additional definitions on pp. 42-44, including definition of “ <i>Standard turnover</i> ” (i.e. the trends clause)
ADA626-20190601 Leisure (Instant Underwriting)	Policy Section A – Automatic cover, Sub-section 2 – Business interruption, What is covered, basis of settlement provisions (pp. 44-45)	General Definitions, including definition of “ <i>Damage</i> ” (p. 12) Policy Section A – Automatic cover, Sub-section 2 – Business interruption, Additional definitions on pp. 42-44, including definition of “ <i>Standard turnover</i> ” (i.e. the trends clause)
ADA627-20191024 Office and Surgery (Instant Underwriting)	Policy Section A – Automatic cover, Sub-section 2 – Business interruption, What is covered, basis of settlement provisions (including the trends clause) (pp. 42-43)	General Definitions, including definition of “ <i>Damage</i> ” (p. 8) Policy Section A – Automatic cover, Sub-section 2 – Business interruption, Additional definitions on pp. 40-41, including the words “ <i>We will adjust the figures as necessary to provide for trends or special circumstances affecting the business before or after the damage or which would have affected the business had the damage not occurred</i> ” (i.e. the trends clause)

Type 3		
<p>*ADA555-20191101 Forge Commercial Combined (with Eastlake & Beachell)</p>	<p>Policy Section 2 – Business Interruption, Sub section A – Estimated gross profit, basis of payment provisions</p> <p>(p. 48)</p>	<p>General Definitions, definition of “<i>Damage</i>” (p. 11)</p> <p>Policy Section 2 – Business Interruption, Sub section A – Estimated gross profit, Additional definitions on pp. 46-47, including definitions of “<i>Annual gross rentals</i>”, “<i>Annual gross turnover</i>”, “<i>Rate of gross profit</i>”, “<i>Standard gross rentals</i>”, “<i>Standard turnover</i>” and the bracketed provision included alongside (i.e. the trends clause)</p>

Annex 2: basis of settlement and loss of income provisions in Third Defendant's wordings

Policy wording (lead wording asterisked)	Basis of settlement or loss of income provision	Relevant definitions
Type 1.1		
PD3258 (ME871) Heritage Business and Leisure	Policy Section 4 (Business interruption), Basis of Settlement Clause (pp. 55-56)	Policy Section 4 (Business Interruption), Definitions on pp. 54-55, including definitions of " <i>Adjusted</i> " (i.e. the trends clause) and " <i>Damage</i> "
Education (ME794)	Policy Section 4 (Business interruption), Basis of Settlement Clause (pp. 51-52)	Policy Section 4 (Business Interruption), Definition on pp. 50-51, including definitions of " <i>Adjusted</i> " (i.e. the trends clause) and " <i>Damage</i> "
Education (ME868)	Policy Section 4 (Business interruption), Basis of Settlement Clause (pp. 53-54)	Policy Section 4 (Business Interruption), Definitions on pp. 52-53, including definitions of " <i>Adjusted</i> " (i.e. the trends clause) and " <i>Damage</i> "
ME866 Charity and Community	Policy Section 4 (Business interruption), Basis of Settlement Clause (pp. 54-55)	Policy Section 4 (Business Interruption), Definitions on pp. 53-54, including definitions of " <i>Adjusted</i> " (i.e. the trends clause) and " <i>Damage</i> "
ME867 Faith and Community	Policy Section 4 (Business interruption), Basis of Settlement Clause (pp. 54-55)	Policy Section 4 (Business Interruption), Definitions on pp. 53-54, including definitions of " <i>Adjusted</i> " (i.e. the trends clause) and " <i>Damage</i> "
ME869 Care	Policy Section 3 (Business interruption), Cover Clause, Amount Payable (pp. 35-36)	Policy Section 3 (Business Interruption), Definitions on p. 34, including definitions of " <i>Adjusted</i> " (i.e. the trends clause) and " <i>Damage</i> "

PD3259 (ME872) Heritage Arts and Culture	Policy Section 4 (Business interruption), Basis of Settlement Clause (pp. 55-56)	Policy Section 4 (Business Interruption), Definitions on pp. 54-55, including definitions of “Adjusted” (i.e. the trends clause) and “Damage”
*ME857 Parish Plus	Policy Section 3 (Loss of Income), Basis of Settlement Clause (pp. 43-44)	Policy Section 3 (Loss of Income), Definitions on p. 42, including the definition of “Damage”
ME858 Parishguard	Policy Section 2 (Loss of Income), Basis of Settlement Clause (pp. 37-38)	Policy Section 2 (Loss of Income), Definitions on p. 36, including the definition of “Damage”
PD2513 Pound Gates Nursery	Policy Section 3 (Business interruption), Basis of Settlement Clause (pp. 42-43)	Policy Section 3 (Business Interruption), Definitions on pp. 41-42, including definitions of “Adjusted” (i.e. the trends clause) and “Damage”
Type 1.2		
*ME886 Nurseries	Policy Section 3 (Business interruption), Cover Clause, Amount Payable (pp. 40-41)	Policy Section 3 (Business Interruption), Definitions on p. 39, including definitions of “Annual Revenue” and “Standard Revenue” (which both contain the trends clauses) and “Damage”
MGM602 Marsh School and College	Business Interruption Policy Section, Cover Clause, Amount Payable (p. 35-36)	Business Interruption Policy Section, Definitions on pp. 34-35 including definitions of “Adjusted” (i.e. the trends clause) and “Damage”