

# SUPREME COURT JUDGMENT HANDED DOWN IN COVID-19 BUSINESS INTERRUPTION INSURANCE TEST CASE

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Deals and cases

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Herbert Smith Freehills acted for the claimant in the proceedings - the Financial Conduct Authority.

The Supreme Court has today handed down judgment in the COVID-19 Business Interruption insurance test case of The Financial Conduct Authority v Arch and Others. Herbert Smith Freehills acted for the FCA who advanced the claim for policyholders.

The Supreme Court unanimously dismissed Insurers' appeals and allowed all four of the FCA's appeals (in two cases on a qualified basis), bringing positive news to policyholders across the country that have suffered business interruption losses as a result of the COVID-19 pandemic. At first instance the FCA had been successful on many of the issues, and now the Supreme Court has found for the FCA substantially on the issues appealed.

The proceedings were brought to determine issues of principle on policy coverage and causation under various specimen insurance wordings in respect of policyholder claims for business interruption losses arising in the context of the COVID-19 pandemic. It is estimated that some 700 types of policies held by 370,000 policyholders across 60 different insurers could potentially be affected by the case. The Supreme Court judgment brings definitive guidance on the proper operation of cover under certain non-damage business interruption insurance extensions and clarity to policyholders and insurers alike.

The proceedings were brought by the FCA as the first test case under the Financial Market Test Case Scheme. The Scheme can be applied to claims which raise issues of general importance in relation to which immediately relevant authoritative English law guidance is needed. The appeals were heard by the Supreme Court under the "leapfrog" procedure which enables an appeal in exceptional circumstances to bypass the Court of Appeal and proceed directly to the Supreme Court. The Supreme Court panel comprised Lord Reed, President of

the Supreme Court, Lord Hodge, Deputy President of the Supreme Court, Lord Briggs, Lord Hamblen and Lord Leggatt.

*“This is a very positive result for policyholders” says [Paul Lewis](#), partner and Global Head of Insurance Disputes at Herbert Smith Freehills. “It improves their position significantly beyond that which was already established by the High Court judgment. Importantly also for the insurance industry the judgment brings definitive guidance to how business interruption insurance wordings should operate in the context of the COVID-19 pandemic, which has had such a devastating effect on businesses across the country. The speed with which these proceedings were brought, and the breadth of the issues covered, is a great credit to the efforts of the FCA, Counsel and Herbert Smith Freehills team.”*

The Herbert Smith Freehills team working on the High Court and Supreme Court proceedings was led by partner and Global Head of Insurance Disputes Paul Lewis, partners [Sarah McNally](#) and [Greig Anderson](#), and senior associate [Antonia Pegden](#), supported by consultant [Frank Thompson](#), senior associates [David Jones](#), [Dan Saunders](#), [Rachelle Waxman](#), [Jade Hu](#) and associates [Tristan Smith](#), [Nikita Dave](#), [William Gibson](#), [Joanna Giza](#), [Bianca Chang](#), [Sarah McCadden](#), [Hebe Peck](#) and Juliana Rego.

The Counsel team comprised Colin Edelman QC, Leigh-Ann Mulcahy QC, Richard Coleman QC, Richard Harrison, Peter Ratcliffe, Adam Kramer, Deborah Horowitz and Max Evans.

The defendant Insurers were represented by Allen & Overy, Clyde & Co, DAC Beachcroft, DWF and Simmons & Simmons.

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