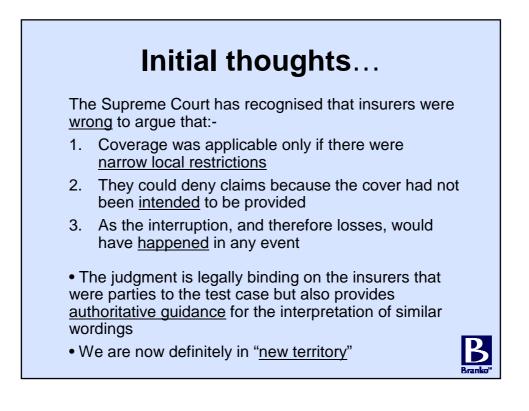
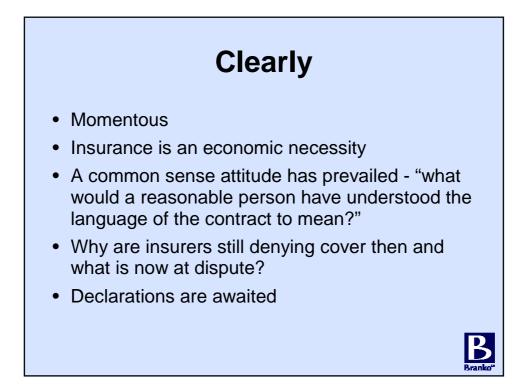


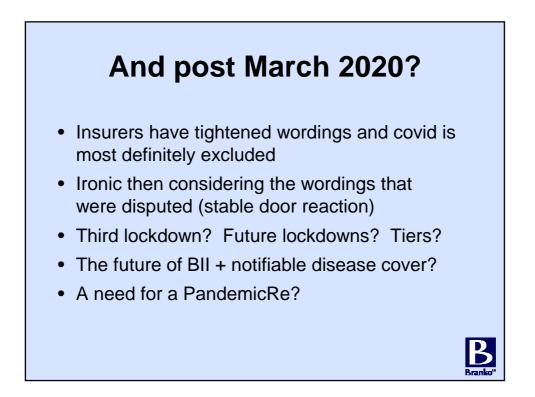
Background

- Pandemic does not come into it
- Wordings have evolved from damage cover to cover all manner of BI incl disease
- FCA's aim was to clarify key issues of contractual uncertainty (not everything was considered)
- Appeal looked at only 11 wordings from 6 insurers
- Wider principles to apply to 370,000 policyholders, 700 types of policy written by 60 insurers
- What would you expect to have happened if a disease was discovered or if there was a denial of access - insurer and client?









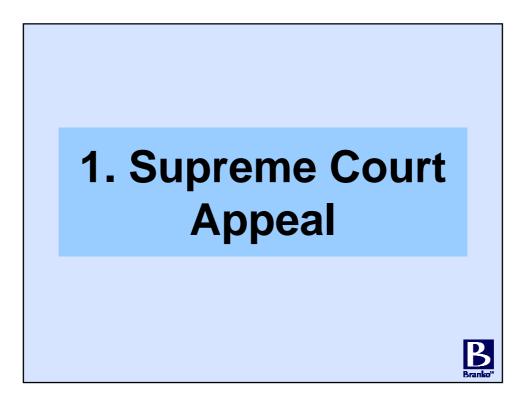
Worst hit sectors?

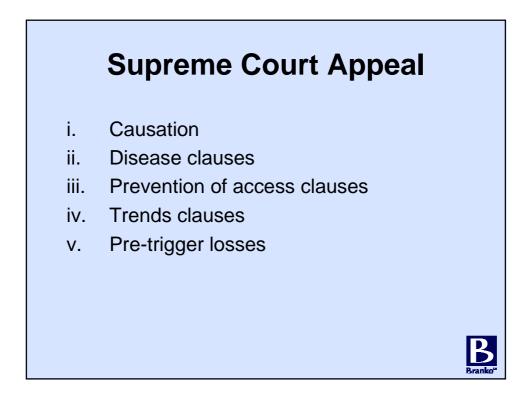
- Airlines + Tourism + Hotels
- Arts + Theatres + Entertainment
- Hospitality
- High Street Retail
- Hair + Beauty
- Face to face business activities
- What hit have they had as a result of no payout?

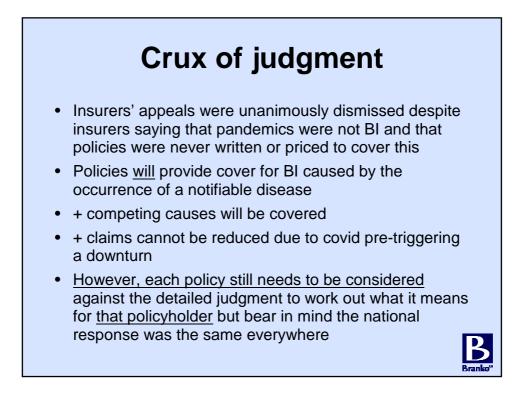
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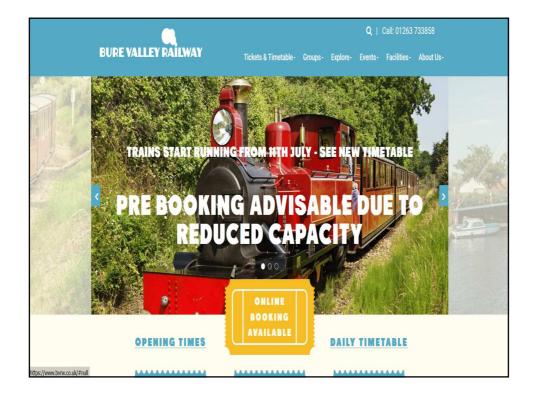
Latest upda	ates
15 February 2021	Submissions to the Supreme Court on the declarations
	The FCA and the other parties to the test case have made written submissions to the Supreme Court on the form of the declarations to be issued by the Court. These declarations will be the culmination of the judgments in the test case and will declare whether the policies in the representative sample potentially cover business interruption losses arising from the
	coronavirus (Covid-19) pandemic. We have published:
	 <u>a draft of the declarations</u> showing which parts are agreed and which remain in dispute submissions of <u>the FCA</u> joint submissions of <u>Arch, Argenta, Hiscox, MS Amlin, QBE and RSA</u> in relation to common declarations
	 submissions of <u>Arch Insurance (UK) Ltd</u> in relation to its specific declarations joint submissions of <u>Ecclesiastical Insurance Office plc and MS Amlin Underwriting</u> <u>Limited</u> in relation to their specific declarations
	 submissions of <u>Hiscox Insurance Company Ltd</u> in relation to its specific declarations submissions of <u>Royal & Sun Alliance Insurance Plc</u> in relation to its specific declarations submissions of the <u>Hiscox Action Group</u>
	We expect that the Supreme Court will issue the declarations without a further hearing, but we do not know when.

FCA FINANCI CONDUC	AL CT ITY			Search		٩
_	<u>About us</u>	<u>Firms</u>	<u>Markets</u>	<u>Consumers</u>	News	Publications
<u>Home</u> / <u>Firms</u> / <u>Busin</u>	ess interruption insuranc	<u>e</u> / <u>Business interrup</u>	tion insurance – polic	<u>/ checker</u>		
Business inte	erruption in	surance –	policy che	cker		in 🗑 💌
First published: 29/01/202	Last updated: 29/0	01/2021			Print Page	Share page
u			(540-)	to find such if	In this sectio	n
Jse our policy checker and policyholder frequently asked questions (FAQs) to find out if your insurance policy may cover business interruption losses caused by coronavirus Covid-19) as a result of the FCA's test case and what you can do next.		General FAQs for policyholders with business interruption insurance				
What you will n	eed: your insu	your insurance policy wording includi		uding any	More informa	ition 🗧
'schedule'	- / ///00	,			Business interr	uption insurance

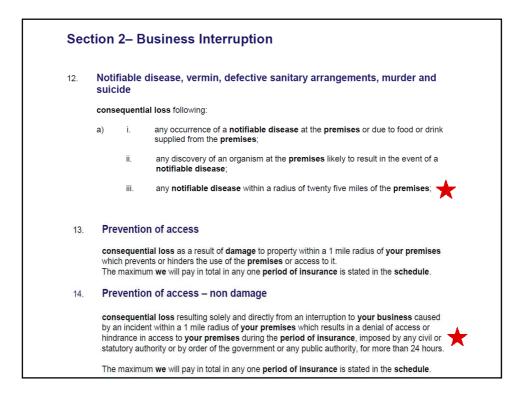




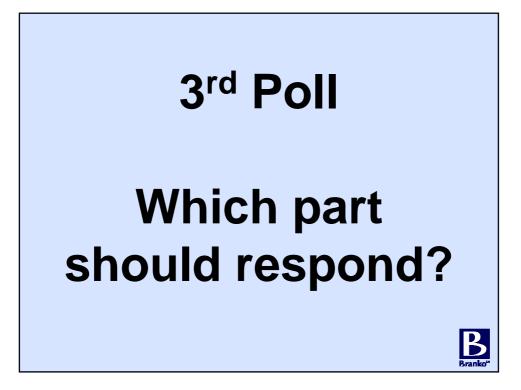




Bomb hoax £500,000 in total in any one period of insurance. Unspecified suppliers £250,000 or 10% of the sum insured, whichever is the less, for any one loss Unspecified customers £250,000 or 10% of the sum insured, whichever is the less, for any one loss Storage at other locations £100,000 any one loss Essential personnel £25,000 in total in any one period of insurance Exhibitions £100,000 in total in any one period of insurance Failure of utilities supply £250,000 any one loss Failure of utilities supply – terminal ends - £250,000 any one loss Fines, penalties and damages £25,000 in total in any one period of insurance Loss of attraction £250,000 whichever is the lesser for any one loss	\checkmark
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LUSS OF ALL ACTION 2200,000 WHICHEVELIS THE RESERTION ANY ONE 1055	1
Motor vehicles £500,000 in total in any one period of insurance	*
Notifiable disease, vermin, defective sanitary arrangements, murder and suicide	v V
£500,000 in total in any one period of insurance	•
Prevention of access – non damage	
Prevention of access	1
Rental charges	√ √



	as ting from interruption of or interference with the business carried on by you at the following damage to property used by you at the premises for the purpose of the
Damage(d) Physical a	accidental loss of or destruction of or damage to the property insured.
to be a Howey the per	iod priod beginning when damage occurs, and ending when the results of the business cease priod beginning when damage , but not exceeding the maximum indemnity period . ver for the Notifiable disease additional cover the following definition applies: iod during which the results of the business will be affected following the loss, discovery dent beginning: in the case of a), d), e) and f) with the date of the loss or discovery; or in the case of b) and c) with the date from which the restrictions on the premises are applied and ending not later than the maximum indemnity period after that.
Notifiable dise Illness a) b)	ease sustained by any person resulting from: food or drink poisoning; or any human infectious or contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS)) an outbreak of which the competent local authority has stipulated will be notified to them.

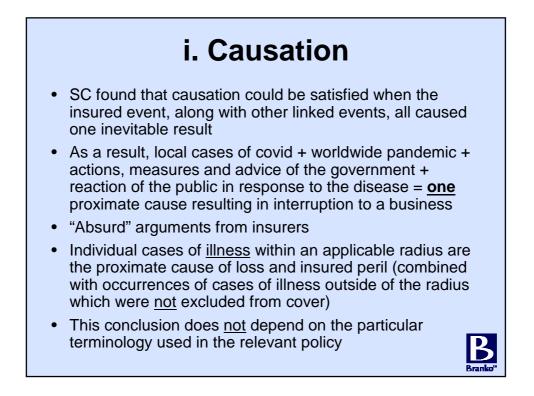




Non-damage?

 257 - The reference to "damage" is inapposite to business interruption cover which does not depend on physical damage to insured property such as the cover with which these appeals are concerned. It reflects the fact that the historical evolution of business interruption cover was as an extension to property damage insurance. It was held by the court below, and is now common ground, that for the purposes of the business interruption cover which is the subject of these appeals, the term "damage" should be read as referring to the insured peril.





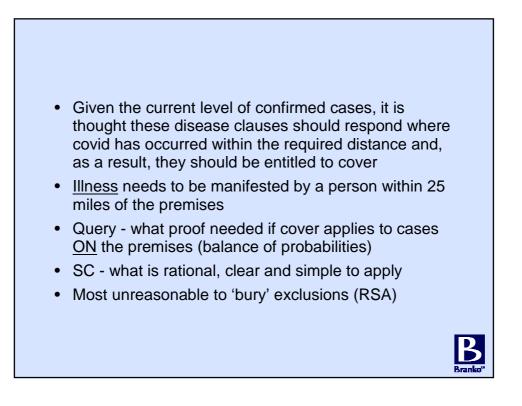
ii. Disease clauses

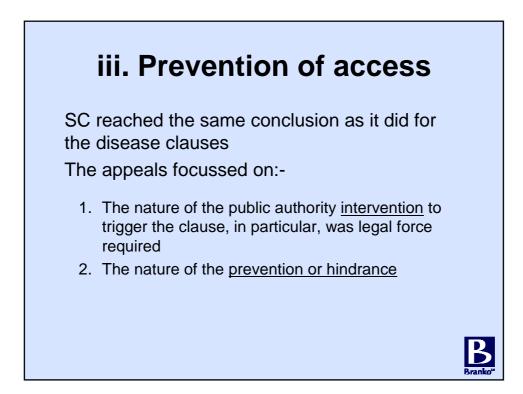
• Argenta, QBE, Amlin and RSA wordings were considered - insurers stated that losses were only covered if the disease had occurred in the insured area

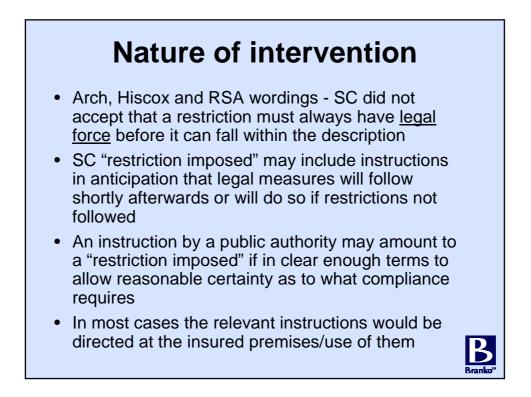
• Disease clauses will cover BI resulting from local cases of covid <u>and</u> the wider pandemic <u>and</u> the resulting actions and should be treated as <u>one</u> cause

• Disease clauses will therefore respond to BI caused by government action in response to the disease, provided there has been at least one occurrence of the illness within the specified radius







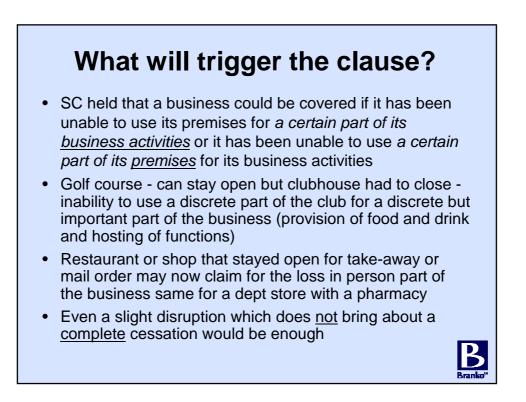


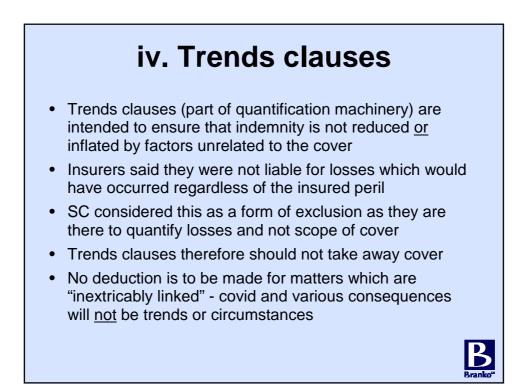


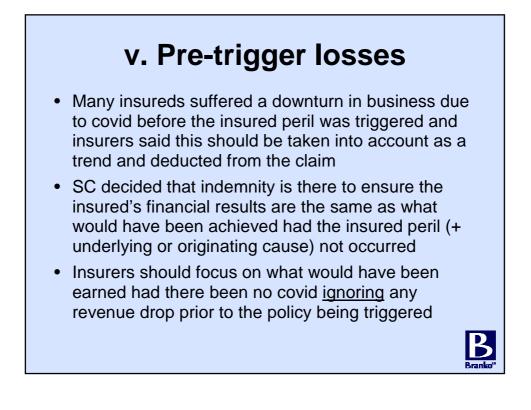
	Example Businesses	Govt requirement
1	Restaurants, cafes, bars	No customers on the premises, but can do delivery
2	Cinemas, theatres, nightclubs, gyms, museums, galleries	No customers, Close entirely
3	Food retailers, pharmacies, off licenses, banks, dry cleaners	Explicitly allowed to stay open
4	Sale of goods/services, including retailers	No customers on the premises, but can do delivery
5	Accountants, solicitors, professional services, manufacturers, construction	Not explicitly referred to in the regulations
6	Businesses offering holiday accommodation	Restriction on use
7	Places of worship, nurseries, schools	Restriction on use

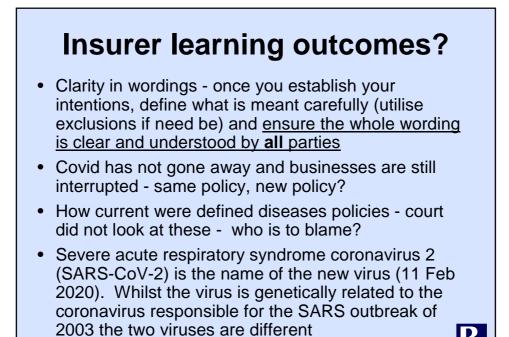
What did this mean?

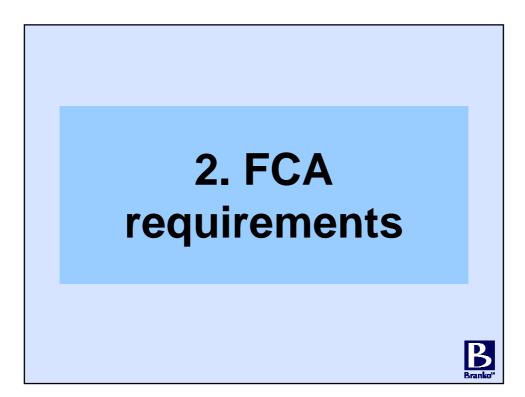
- The announcement given on 20 March 2020 (named businesses should close) was capable of being a "restriction imposed" - these businesses would reasonably understand that compliance was required
- Regulation 6 26 March Regs (which did not order particular businesses to close but prohibited us from leaving our homes without reasonable excuse) possibly not a "restriction imposed" and so not an "inability to use"
- "Inability to use" is <u>not</u> the same as a "hindrance" or "disruption" to normal use as businesses could operate (Hiscox wordings) and QBE require "closure"
- "It appears to us that the cases in which Regulation 6 would have caused an "inability to use" premises would be <u>rare</u>. Whether there were such cases would be a <u>question of fact</u>." Policy wording dependent.







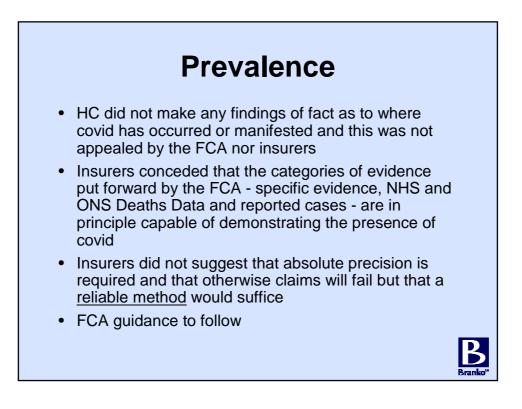




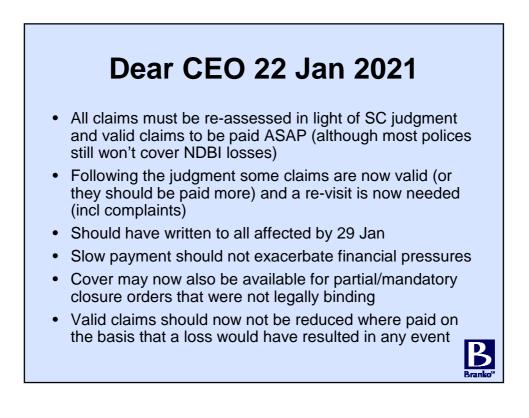


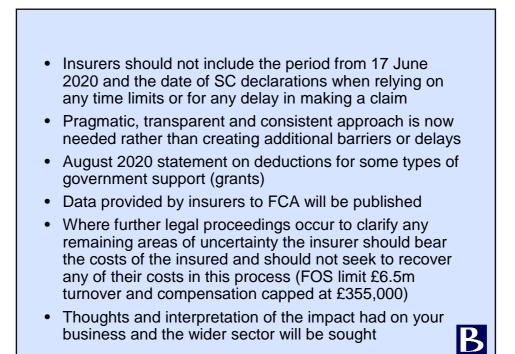
Draft guidance: Business interruption insurance test case proving the presence of coronavirus (Covid-19)

11 December 2020











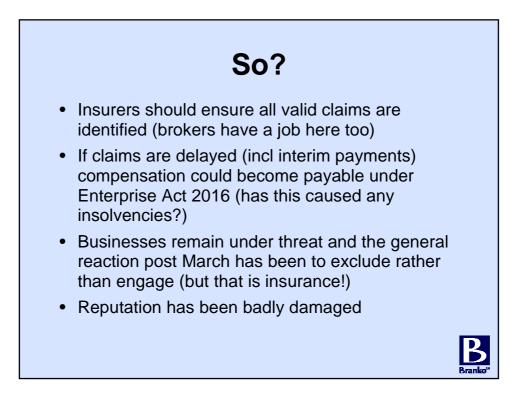


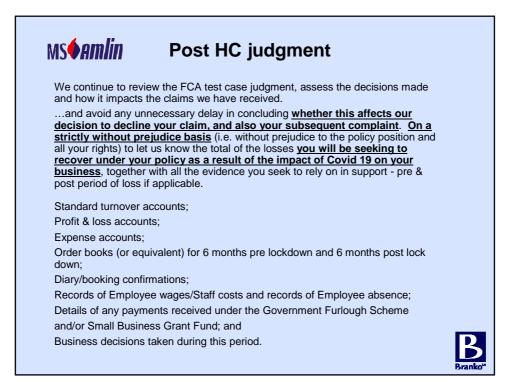
Finalised guidance

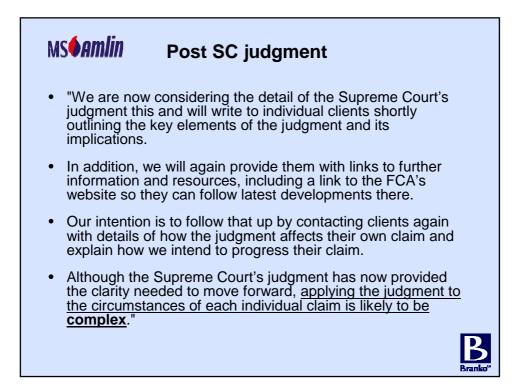
Business interruption insurance test case: Finalised guidance for firms

June 2020

6.3 Insurers should publish sufficient details with appropriate prominence and signposting to keep all policyholders with relevant non-damage business interruption policies updated about the test case and its implications for potential claims under their policies. Insurers may publish this information on the firm's website or by other general means. This information should be published promptly after 17 June 2020.

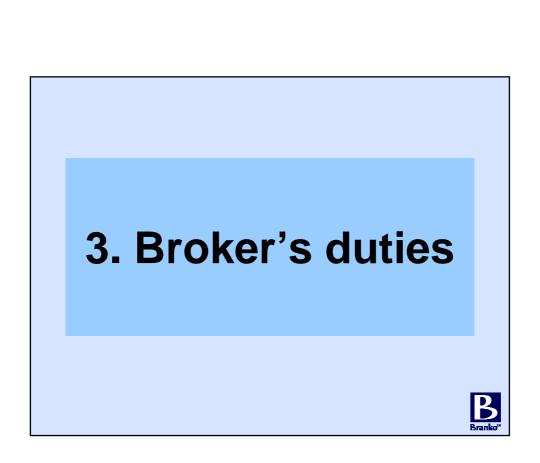






Have insurers got it?

- "Having reviewed the claim, this policy extension is not engaged by the present circumstances. While we appreciate that the insured premises may have been forced to close by the...Regulations...<u>do not constitute</u> <u>actions taken within the vicinity of the insureds</u> <u>premises</u>."
- "...as there has been <u>no physical damage</u> to the property, the loss falls outside of the scope of policy cover."
- "...the Security of State who issued the close down order was <u>neither the police or competent authority</u> so no cover applies"



Broker's duties

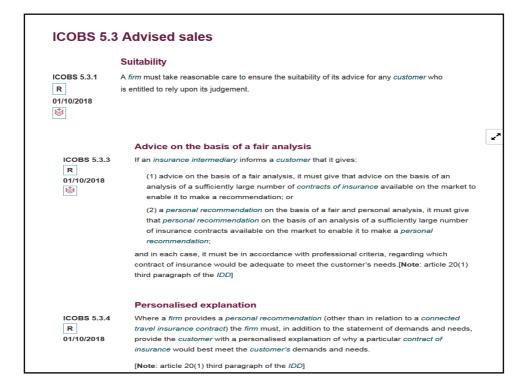
- Assessing the insured's needs
- Not obtaining insurance
- Not obtaining the insurance the insured wanted
- Not obtaining insurance meeting the insured's <u>needs</u>
- Not exercising discretion in a reasonable way
- Failing to act with reasonable speed
- Liabilities associated with Non-Disclosure

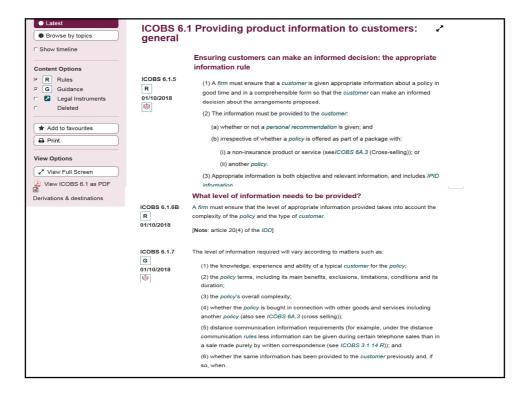
- Liabilities associated with Misrepresentation
- Not advising <u>adequately</u> on the existence of and terms of cover
- Other failure to give <u>competent advice</u>
- Liabilities during the currency of the policy
- Failure in respect of notification and in respect of claims

Based on Jackson & Powell Professional Liability Chapter 10.



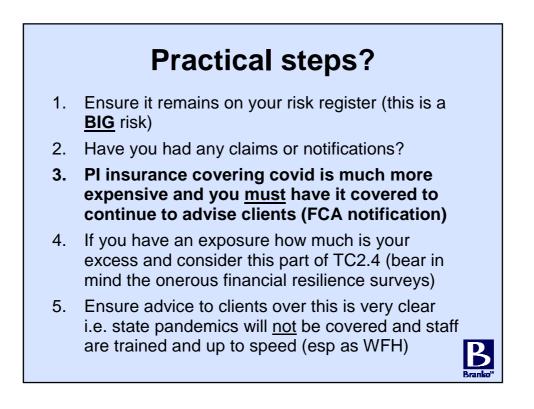
	Demands and needs
ICOBS 5.2.2	(1) Prior to the conclusion of a <i>contract of insurance</i> a <i>firm</i> must specify, on the basis of information obtained from the <i>customer</i> , the demands and the needs of that <i>customer</i> .
01/10/2018 🕸	(2) The details must be modulated according to the complexity of the <i>contract of insurance</i> proposed and the type of <i>customer</i> .
	(3) A statement of the demands and needs must be communicated to the <i>customer</i> prior to the conclusion of a <i>contract of insurance</i> .
	[Note: articles 20(1) and 20(2) of the <i>IDD</i>]
ICOBS 5.2.2A G 01/10/2018	A <i>firm</i> may obtain information from the <i>customer</i> in a number of ways including, for example, by asking the <i>customer</i> questions in person or by way of a questionnaire prior to any <i>contract of insurance</i> being proposed.
ICOBS 5.2.2B R 01/10/2018	When proposing a <i>contract of insurance</i> a <i>firm</i> must ensure it is consistent with the <i>customer's</i> insurance demands and needs. [Note: recital 44 to, and article 20(1) of, the <i>IDD</i>]
ICOBS 5.2.2C	ICOBS 5.2.2BR applies whether or not advice is given and in the same way regardless of whether that contract is sold on its own, in connection with another <i>contract of insurance</i> , or
01/10/2018	in connection with other goods or services.





Check the following

- 1. Did you fully assess client requirements?
- 2. Were wider policy wordings/limits available to you?
- 3. Was pandemic cover available and at what cost?
- 4. What market analysis did you undertake?
- 5. Why did you recommend the policy as then being <u>suitable</u> for that client?
- 6. And did you state the consequences of not following your advice?
- As wordings have changed since March 2020 how does this judgment affect the policies sold since then and current/future lockdowns? Does your continuing advice reflect this?



BANK OF ENGLAND PRUDENTIAL F AUTHORITY	REGULATION	FINANCIAL CONDUCT AUTHORITY	
Notification For	m		
(June 2020)			
Firm name		("The Firm")	
Firm Reference Number			
Address			
Professional indemnity insurance (PI	I) cover	Ť	
For example:			
 cover not renewed; 			
• cover exhausted; and			
• cover does not meet FCA or PRA	requirements.		
		P	Branko

