Press Summary

22 April 2026

Gatwick Investment Ltd and others (Appellants) *v* Liberty Mutual Insurance Europe SE (Respondent); Bath Racecourse Company Ltd and others (Appellants) *v* Liberty Mutual Insurance Europe SE and others (Respondents)

[2026] UKSC 14

On appeal from: [2025] EWCA Civ 153

Justices: Lord Reed (President), Lord Briggs, Lord Hamblen, Lord Leggatt and Lord Burrows

Background to the Appeal

These linked appeals concern claims made under business interruption insurance policies for losses suffered by the appellant policyholders during the Covid-19 pandemic. In the first set of proceedings (the "**Gatwick Proceedings**"), the policyholders own or operate hotels in England. In the second set of proceedings (the "**Arena Proceedings**"), the policyholders operate racecourses, greyhound racing tracks, golf clubs, hotels and a pub in England and Wales. In each case the policyholders were insured against risks that included "Government" action which prevented or hindered the use of their premises following "danger or disturbance" (agreed to include any occurrence of Covid-19) within 1 mile of their premises.

In *Financial Conduct Authority v Arch Insurance (UK) Ltd* [2021] UKSC 1 ("**the FCA test case**"), the Supreme Court decided a number of issues about the effect of different types of business interruption insurance policy (including policies like these) and how they apply to financial losses related to Covid-19. On the basis of that decision, the insurers now accept that they are in principle liable to indemnify the policyholders for such losses. The issue in these appeals is whether "savings" clauses in the policies require credit to be given in calculating the amounts payable by the insurers for furlough payments received by the policyholders from the UK Government under the Coronavirus Job Retention Scheme.

The savings clauses are based on standard wording published by the Association of British Insurers. The wording in the Gatwick policies and the Arena policy is slightly different, but the differences are not material:

Gatwick policies savings clauses

The amount payable shall be "*less any sum saved during the Indemnity Period in respect of such of the charges of the Business payable out of Gross Revenue as may cease or be reduced in consequence of the incident.*"

Arena policy savings clause

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

The High Court and the Court of Appeal both decided that the furlough payments received by the policyholders "reduced" the charges or expenses of the business and did so "in consequence" of the "incident" / "Damage". It is agreed that the term "incident" or "Damage" refers to the occurrence of the risk covered by the policy (known as the "insured peril"). Accordingly, the courts held that the furlough payments had to be deducted from the amounts payable under the policies.

The policyholders now appeal to the Supreme Court arguing that: (i) there was no "reduction" of charges or expenses as the wages and other employment costs had to be paid by the policyholder before being reimbursed under the furlough payment scheme (the "**construction issue**"); and (ii) as a matter of law the furlough payments were not caused by the insured peril and were therefore not "in consequence" of it (the "**causation issue**").

Judgment

The Supreme Court unanimously dismisses the appeal. The judgment is given by Lord Hamblen, Lord Leggatt and Lord Burrows with whom Lord Reed and Lord Briggs agree.

Reasons for the Judgment

The Construction Issue

The Court confirms that there is no unique approach to interpreting an insurance policy. As set out in the FCA test case at para 47, the policy terms have to be interpreted objectively by asking what a reasonable person in the position of the parties would have understood the language of the policy to mean **[38]-[40]**. The Court further confirms that it is both permissible and correct to consider the indemnity nature of an insurance policy when interpreting its terms, provided the policy language does not require otherwise **[41]-[46]**.

As a matter of language, the savings clauses could be understood as referring to whether a charge or expense is reduced as a matter of fact (as the insurers argue) or whether the liability for a charge or expense is reduced as a matter of law (as the policyholders argue) **[50]**. Either construction is a possible meaning, but the Court considers that the insurers' construction is to be preferred for eight principal reasons **[51]**:

(i) A reasonable person when interpreting the savings clauses would not differentiate between: (a) a policyholder paying a charge and expense and being funded or reimbursed for that payment and (b) the policyholder's obligation to pay the charge or expense being waived or paid on its behalf by another person. Whilst the mechanics may differ, the economic outcome for the policyholder is the same. The insurers' construction of the savings clauses reflects this reality **[52]**.

(ii) The general context is policies which are concerned with the economic effects of insured perils on the policyholder's business. As such, the savings clauses would be expected to be

concerned with the economic effects rather than the legal mechanics of the furlough payments **[53]**.

(iii) The specific context is that the purpose of a savings clause is to prevent over-indemnification of the policyholder. This purpose is best served if all factual savings are taken into account, not just reductions in legal liabilities **[54]-[55]**.

(iv) Where there are two possible meanings of a clause in an insurance contract it is appropriate to prefer the meaning which better fits the purpose of indemnification **[56]**.

(v) The policyholders' construction would lead to arbitrary and uncommercial results. Had it not been for the receipt of furlough payments, they would have made some employees redundant thereby saving on the various costs of employment and reducing their insurance claim. On the policyholders' case, they not only get the benefit of those payments, but they can also get full insurance recovery without regard to the savings that would have been realised if those payments had not been made **[57]**.

(vi) The insurers' interpretation aligns with the reality reflected in UK Government statements that the UK Government was effectively paying the relevant employees' wages / expenses **[58].**

(*vii*) The insurers' interpretation is patently more commercial and has been unequivocally preferred by multiple Commercial Court judges **[59].**

(*viii*) The insurers' interpretation avoids the operation of the savings clauses being dependent upon the artificial distinction between whether the furlough payments were received before or after the payment to the employee **[60]**.

The Causation Issue

There is a straightforward causal connection between the business interruption losses falling within the insurance cover and the savings from the furlough payments. The predictable and direct consequence of the insured peril was that the policyholder instructed employees to cease work but continued to employ them while claiming reimbursement of (a large proportion of) the costs of doing so. The expenses of employing the relevant employees were thereby reduced by the furlough payments, just as they would have been if the employees had been made redundant. The sums saved were caused by the insured peril and were therefore "in consequence" of it **[75]-[76]**.

The policyholders argued otherwise on two grounds: first, that the occurrence of the insured peril was "irrelevant" to the entitlement to furlough payments; and second, that the furlough payments were gratuitous, benevolent or voluntary "collateral" benefits conferred by a third party which are not to be regarded in law as caused by the insured peril **[77]**.

The irrelevance argument

The policyholders emphasised that they would have been entitled to claim, and would have received, furlough payments even if the use of their premises had not been prevented or hindered and irrespective of whether any case of Covid-19 had occurred within one mile of the premises. This, they argued, meant that the insured peril was "irrelevant" to their receipt of furlough payments and cannot be considered to have caused the savings made from receiving such payments **[78]-[82]**.

This argument assumes that, to establish the required causal connection between the furlough payments and the insured peril, it is necessary to demonstrate that the payments would not have been received *but for* the occurrence of the insured peril. The Court rejects this argument for two reasons. First, it is inconsistent with what the Supreme Court decided in the *FCA test case*. The Court decided in that case that, to show that business interruption losses were caused by the insured peril, it is not necessary to satisfy a "but for" test. Logically, as the policyholders accepted, the same test of causation must apply to the causation of savings as applies to the

causation of losses. Second, the policyholders' case is internally inconsistent because, to recover their business interruption losses under the policies, they themselves need to rely on the rejection of the "but for" test and on the analysis of causation adopted in the *FCA test case*. They cannot have it both ways **[87]-[93]**, **[107]**.

The collateral benefits argument

The Court also rejects the argument that the savings were "collateral" to the insured peril and so not caused by it **[108]**, **[145]**, **[155]**. There is a general principle that gifts or other benefits conferred voluntarily or gratuitously by a third party on a claimant in response to a loss may be regarded as "collateral" or independent of the loss because their gratuitous nature means that there is no causal relationship between them **[109]-[110]**. The Court accepts that this principle is relevant in considering whether, under the savings clauses, furlough payments were received "in consequence of" the insured peril **[111]-[115]**.

To support their argument, the policyholders relied on a series of cases in which courts have considered whether or when payments received by the policyholder from a third party are to be treated as reducing the loss against which the policyholder is entitled to be indemnified by the insurer **[116]-[137]**. After examining these cases, the Court finds the law to be that any payment made to the policyholder by a third party in respect of the subject matter of the insured loss, even if made voluntarily or gratuitously, will diminish the loss and reduce the insurer's liability, except where the third party intended to benefit only the policyholder to the exclusion of the insurer **[138]**.

Applying this principle, the furlough payments paid to the policyholders reduced the losses insured against. There is nothing in the terms of the Coronavirus Job Retention Scheme or the surrounding circumstances to suggest that those payments were intended to benefit only the policyholders to the exclusion of any insurer liable to indemnify them for business interruption losses **[139]-[145]**.

The Court rejects the argument that furlough payments, as a matter of principle, ought not to be regarded as caused by the insured peril because they were voluntary, gratuitous or benevolent and were therefore collateral benefits **[148]-[149]**. Furlough payments cannot be characterised as voluntary donations because, under the terms of the scheme, policyholders who met the qualifying conditions had a legal right to receive the payments and the UK Government had a legal obligation to make them **[150]-[151]**. Nor can the furlough payment scheme be characterised as a voluntary, gratuitous or benevolent intervention by the UK Government. There were benefits to the UK Government and to the public at large of reducing disruption to the economy and incentivising business to instruct employees to stop working to help reduce the spread of infection. The scheme was not an exercise of gratuitous or benevolent giving **[152]-[155]**. A better analogy is with the treatment of state benefits payable as of right to injured claimants which, at common law, are to be deducted when assessing damages **[160]**.

References in square brackets are to paragraphs in the judgment.