

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**

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**AGREED FACTS – DOCUMENT 5**

**PROCEDURE FOR NOTIFICATION OF A DISEASE**

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## INTRODUCTION

1. The procedure for notification of disease is governed by two principal pieces of legislation: the Public Health (Control of Disease) Act 1984 (“**Act**”) and the Health Protection (Notification) Regulations 2010 (“**Regulations**”).
2. As regards the Act:
  - 2.1 Pursuant to section 13, the Secretary of State may, as respects the whole or any part of England and Wales, including coastal waters, make regulations *“with a view to the treatment of persons affected with any epidemic, endemic or infectious disease and for preventing the spread of such diseases”* (section 13(1)(a)). Such regulations must specify the authorities (county councils, local authorities, NHS trusts, amongst others) by whom they are to be enforced and executed (section 13(4)). Authorised officers of these authorities, as well as officers of customs and excise, have the power *“to enter any premises, vessel or aircraft for the purpose of executing, or superintending the execution of, regulations under this section”* (section 13(5)).
  - 2.2 Pursuant to section 45C:
    - 2.2.1 *“The appropriate Minister [the Secretary of State, as regards England, and the Welsh Ministers, as regards Wales] may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales (whether from risks originating there or elsewhere)”, whether “in relation to infection or contamination generally or in relation to particular forms of infection or contamination” and so as “to make provision of a general nature, to make contingent provision or to make specific provision in response to a particular set of circumstances”.*
- Such regulations may include provisions *“(a) imposing duties on registered medical practitioners or other persons to record and notify cases or suspected cases of infection or contamination, (b) conferring on local authorities or other persons functions in relation to the monitoring of public health risks, and (c) imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health”.*
- 2.3 Pursuant to section 45F, such regulations may, amongst other things, *“(a) confer functions on local authorities and other persons; ... (d) provide for the execution and enforcement of restrictions and requirements imposed by or under the regulations ...*
- 2.4 Pursuant to section 45P(2), a *“power to make regulations under this Part includes power to make different provision for different cases or different areas”.*
3. Exercising the powers conferred by the above provisions of the Act, the Secretary of State made the Regulations, which came into force on 6 April 2010, except for regulation 4 which

came into force on 1 October 2010. The Regulations set out the mechanics for the notification of disease, and relevant sections are described below.

## **SECTION 1: REGULATIONS AND THE PROCESS FOR NOTIFICATION OF DISEASE**

### **(a) Duty of registered medical practitioners to notify local authority**

4. Under regulation 2 of the Regulations:
- 4.1 a “*registered medical practitioner*” (“**R**”) must notify the “*proper officer*” of the “*relevant local authority*” if R has “*reasonable grounds for suspecting*” that a patient (“**P**”) (a) has a notifiable disease; (b) has an infection which, in the view of R, “*presents or could present significant harm to human health*”, or (c) is contaminated in a manner which, in the view of R, “*presents or could present significant harm to human health*”,
- 4.2 as regards relevant definitions:
  - 4.2.1 a “*proper officer*” is defined by reference to the Act, and means, in relation to a purpose and to an authority, an officer appointed for that purpose by that authority (section 74 of the Act);
  - 4.2.2 “*relevant local authority*” means the local authority within whose area R attended P on the occasion of forming a suspicion (regulation 2(7) of the Regulations);  
and
  - 4.2.3 “*notifiable disease*” means a disease listed in Schedule 1 to the Regulations (addressed below) (regulation 2(7));
- 4.3 “*Infection*” and “*contamination*” are defined by reference to section 45A of the Act. Section 45(A) includes provision that “*any reference to infection or contamination is a reference to infection or contamination which presents or could present significant harm to human health*”; that “*any reference to the spread of contamination includes a reference to the spread of any source of contamination*”; and that “*any reference to disinfection or decontamination includes a reference to the removal of any vector, agent or source of the infection or contamination*”. R’s notification must include relevant information insofar as it is known to R, including (amongst other things) P’s name, date of birth, address, relevant overseas travel history, contact details, and the disease or infection which P has or is suspected of having or the nature of P’s contamination or suspected contamination;
- 4.4 R must make the notification: in writing within 3 days from the day on which he forms a suspicion; and if he considers the case to be urgent (having regard to the nature and spread of the disease), then orally as soon as reasonably practicable; and
- 4.5 the regulation does not apply where R reasonably believes that the proper officer of the relevant local authority has already been notified with regard to P and the suspected

disease, infection or contamination by another registered medical practitioner in accordance with that regulation.

5. Under regulation 3 of the Regulations, R must notify the proper officer of the relevant local authority where R has reasonable grounds to believe that P has died whilst (a) infected with a notifiable disease; (b) infected with a disease which, in the view of R, presents or could present (or presented or could have presented, when P was alive) significant harm to human health; (c) contaminated in a manner which, in the view of R, presents or could present (or could have presented) significant harm to human health. The notification must include relevant personal details and be made within the same time-frame as per regulation 2.

#### **(b) Duty of diagnostic laboratories to notify of causative agents**

6. Pursuant to regulation 4:
  - 6.1 the operator of a diagnostic laboratory must notify Public Health England (“PHE”) where the diagnostic laboratory identifies a “*causative agent*” in a human sample;
  - 6.2 “*causative agent*” is defined as a causative agent listed in Schedule 2 to the Regulations (as to which, see further below), or evidence of an infection caused by such an agent;
  - 6.3 “*operator of a diagnostic laboratory*” is defined as the corporate body operating the diagnostic laboratory or, if there is no such body, the director of the diagnostic laboratory;
  - 6.4 the notification must include certain prescribed information, including (amongst other things) the name of the laboratory, details of the causative agent and P’s details;
  - 6.5 the notification must be made in writing within 7 days from the day on which the causative agent is identified, and if the operator of the diagnostic laboratory considers the case urgent, then orally as soon as reasonably practicable;
  - 6.6 the regulation does not apply where the operator reasonably believes that PHE has already been notified by an operator of another diagnostic laboratory in relation to the same causative agent in a sample from the same person; and
  - 6.7 it is an offence for the operator to fail without reasonable excuse to comply with the regulation (with liability on summary conviction to a fine up to level 5 on the scale).
7. Pursuant to regulation 5, PHE may request that the person who solicited the test which identified the causative agent, provide to it the information listed at regulation 4(2), insofar as that information was not included in the notification, and that information must be provided within 3 days of the request, or if PHE considers it urgent, then orally as soon as reasonably practicable.

**(c) Duty of the relevant local authority to disclose notification to others**

8. Under regulation 6:
  - 8.1 the regulation applies where the proper officer of a local authority has received a notification under regulation 2 or 3;
  - 8.2 the proper officer of the local authority must disclose the fact of its notification and its contents to:
    - 8.2.1 PHE;
    - 8.2.2 the proper officer of the local authority in whose area P usually resides (if different); and
    - 8.2.3 the proper officer of the port health authority or local authority in whose district or area a ship, hovercraft, aircraft or international train is or was situated from which P has disembarked (if known to the disclosing proper officer and if that officer considers disclosure appropriate); and
  - 8.3 the disclosure must be made in writing within 3 days beginning with the day that the proper officer receives the notification, and if the disclosing proper officer considers that the case is urgent (based on the criteria in regulation 6(5)), then orally as soon as reasonably practicable.
9. Pursuant to regulation 7, notifications, information and disclosures made pursuant to regulations 2 to 6, as well as lists provided under regulation 3 of the Health Protection (Local Authority Powers) Regulations 2010 (“**Local Authority Regulations**”) and certain reports provided under the Health Protection (Part 2A Orders) Regulations 2010 (“**Part 2A Regulations**”), may be communicated electronically in prescribed circumstances.

**(d) Schedules to the Regulations: notifiable diseases and causative agents**

10. Schedule 1 contains the list of notifiable diseases. On 5 March 2020, COVID-19 was added to the list by regulation 2(2) of the Health Protection (Notification) (Amendment) Regulations 2020 (“**Notification Amendment Regulations**”).
11. Schedule 2 contains the list of causative agents. On 5 March 2020, SARS-CoV-2 was added to the list by regulation 2(3) of the Notification Amendment Regulations.
12. The Notification Amendment Regulations were made by the Secretary of State in exercise of the powers conferred by sections 45C(1), (2) and (3)(a), 45F(2)(a) and (b) and 45P(2) of the Act.
13. Formerly, under section 16 of the Act, a local authority had the power by order to “*direct that an infectious disease other than one specified [elsewhere in the legislation], for the purpose of the application to their district of such of the provisions of this Act relating to notifiable diseases as are specified in the order, be deemed to be a notifiable disease*”.

This was a replacement for section 147 of the Public Health Act 1936 (repealed by the Act) by which local authorities had had the power to extend the category of notifiable diseases. Such an order under section 16 of the Act had to be approved by the Secretary of State, advertised and circulated to relevant registered medical practitioners. In time, the procedures under the Act were regarded as outmoded, and following a formal consultation process, parts of the Act were repealed by the Health and Social Care Act 2008, including section 16 (from 26 July 2010). The procedure for notifications today is that set out further above (i.e. the exercise of powers by the Secretary of State). There does not appear to be any residual power in any legislation for a local authority to deem a disease notifiable.

14. Part of the review and overhaul of procedures during 2008 led to the granting of other powers to and imposition of duties on local authorities, including to request or require action to prevent, protect against or control a significant risk to human health. Those powers are set out in the Act, the Local Authority Regulations and the Part 2A Regulations, which are described briefly below.

## **SECTION 2: ACTIONS OF LOCAL AUTHORITIES UNDER THE ACT, THE LOCAL AUTHORITY REGULATIONS AND THE PART 2A REGULATIONS**

15. Under the Act:
  - 15.1 as noted above, pursuant to section 45C, regulations made may include provision *"conferring on local authorities or other persons functions in relation to the monitoring of public health risks, and... imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health"*;
  - 15.2 section 45F(2)(a) similarly provides, as part of the supplementary provisions to sections 45B and 45C, that health protection regulations may confer functions on local authorities;
  - 15.3 there is provision under sections 45G, 45H and 45I for a justice of the peace ("JP") to make "Part 2A orders" (as defined in Section 45K).
  - 15.4 Section 45G provides that JPs can order health measures in relation to persons, and Section 45H provides that JPs can order health measures in relation to things.
  - 15.5 section 45I provides that JPs can order health measures in relation to premises if the justice is satisfied that the premises are or may be infected or contaminated, that there is a risk the premises might infect or contaminate humans, and that it is necessary to make the order in order to remove or reduce that risk. These include orders to close the premises, disinfect or destroy them (see section 45I(2));
  - 15.6 under section 45K, a Part 2A order may include such other restrictions or requirements as the JP considers necessary for the purpose of reducing or removing the risk in question.

- 15.7 under section 45M, the power of a JP to make a Part 2A order is “*exercisable on the application of a local authority*”;
- 15.8 under section 61, “*any proper officer of a relevant health protection authority shall, on producing, if so required, some duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours*” for the purposes of taking relevant action or seeing if there has been a contravention; and
- 15.9 As defined in section 74 of the Act, a “*relevant health protection authority*” means “*a local authority, port health authority or joint board with functions under a relevant provision of this Act, and... if regulations under Part 2A confer functions on a public authority of any other description and state that the authority is to be regarded as a relevant health protection authority with respect to those functions, that authority*”.
16. Under the Local Authority Regulations, there are powers given to a local authority, in the context of infection and contamination, to do the following (amongst other matters): keep children away from school, disinfect objects or premises, and (under regulation 8): “*by serving notice on any person or group of persons request that the person or group of persons do, or refrain from doing, anything for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination which presents or could present significant harm to human health*”.
17. Under the Part 2A Regulations, there is provision in relation to Part 2A orders. The combined effect of the Act and the Part 2A Regulations is that a local authority can apply to a JP for an order that imposes restrictions or requirements on a person, thing, body or premises. As long as the JP is satisfied that particular criteria are met, an order can be made for the purposes of protecting against infection that presents, or could present, significant harm to human health. The Part 2A Regulations set out certain procedural requirements, including to whom the local authority must give notice of an application for a Part 2A order, the required evidence to be given to the JP, the information the local authority must give to the person subject to the order, and a duty of the local authority to report details of applications, orders and variations or revocations of orders to the Health Protection Agency.
18. Note that local authorities also have certain enforcement powers under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (as amended, and see equivalent legislation in Wales, Scotland and Northern Ireland).