

IN THE COURT OF APPEAL (CIVIL DIVISION)

Appeal No. CA-2026-000940

On appeal from:

HIGH COURT OF JUSTICE

Claim No. HT-2023-000476

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

TECHNOLOGY AND CONSTRUCTION COURT (KBD)

(The Honourable Mrs Justice Jefford DBE)

BETWEEN:

VIVID HOUSING LIMITED

Claimant / Respondent

- and -

ALLIANZ GLOBAL CORPORATE & SPECIALTY SE

Defendant / Appellant

APPELLANT'S REPLACEMENT SKELETON ARGUMENT

DATED 3 SEPTEMBER 2026

This Replacement Skeleton Argument has been amended in order to include cross-references to the appeal bundle in accordance with paragraphs 1 and 27(8)(c) of CPR Practice Direction 52C ('Appeals to the Court of Appeal').

References to the Core Bundle and Supplementary Bundle in this Replacement Skeleton Argument are in the forms [CB/tab/page] and [SB/tab/page] respectively.

Introduction and Overview of Allianz's Appeal

1. This Skeleton Argument is filed on behalf of the Defendant/Appellant, Allianz Global Corporate & Specialty SE ("**Allianz**"), in support of its appeal against paragraph 2 of the order of the Honourable Mrs Justice Jefford DBE dated 16 December 2025 (the "**Order**") [CB/6/75-77]. The Learned Judge's reasons for making this part of the Order were set out in her judgment dated 18 December 2025 (the "**Judgment**") [CB/7/78-91], which has the neutral citation of [2025] EWHC 3315 (TCC). References to paragraphs in the Judgment in this Skeleton Argument are in the form [Judgment/paragraph]. Allianz pursues its appeal with permission of the Learned Judge herself, which was granted at a

consequential hearing on 27 March 2026 (and subsequently set out in a sealed order dated 7 April 2026 [CB/10/99-101]).

2. This appeal concerns the proper interpretation of a clause providing cover for “*the threat of imminent destruction or physical damage which requires immediate remedial measures for the prevention of destruction or physical damage within the Period of Insurance*” in a policy of ‘latent defects’ insurance written by Allianz in favour of the Claimant/Respondent, Vivid Housing Limited (“**Vivid**”).
3. The Order and the Judgment concern the determination of Allianz’s application for summary judgment on the basis that Vivid had no real prospect of success in contending that certain alleged defects in the insured property – mainly fire safety defects, such as the alleged absence of cavity barriers – gave rise to a “*threat of imminent destruction or physical damage... which requires immediate remedial measures for the prevention of destruction or physical damage*”.
4. In the Judgment, the Learned Judge dismissed Allianz’s application (save in respect of one of the five alleged defects), apparently accepting Vivid’s contention that “*there is always a threat of imminent damage or destruction by fire*” (underlined emphasis added): see [Judgment/43] [CB/7/88].
5. Although the Learned Judge appeared to accept (in Allianz’s submission, correctly) that this approach to the risk of damage or destruction posed by fire “*would seem to take away or omit any consideration of whether the threat of destruction or damage is likely to occur sufficiently soon*”, she purported to justify this consequence of her construction of the relevant clause on the basis that “*it would not be a commercial construction of the policy if the insured had to demonstrate an imminent threat of fire in the sense of a fire about to break out...*”: see [Judgment/43] [CB/7/88].
6. Allianz contends that the Learned Judge erred as a matter of law in construing the policy as she did. In particular, it was wrong for the Learned Judge effectively to ‘write out’ the requirement for destruction or damage to be “*imminent*” where fire safety defects are concerned. This was not a “*commercial construction*” of the policy and the Learned Judge was wrong to hold or imply that such a “*commercial*” outcome was achieved by means of the construction for which Vivid contended – effectively that all fire safety defects are covered under the relevant clause because the threat posed by fire is always “*imminent*”

– and certainly not when it is borne in mind (as Allianz says it must be) that: (i) the usage of words such as “*imminent*” and “*immediate*” in the relevant clause were objectively intended to limit the insurer’s potential exposure (whereas the Learned Judge’s construction deprives these words of any or any meaningful limiting role where fire safety defects are concerned); and (ii) the same policy excludes cover where a (or the) proximate cause of loss is “*fire*”.

7. Accordingly, in this appeal Allianz asks the Court of Appeal to hold that the Learned Judge was wrong to dismiss any part of its application for summary judgment and allow its appeal pursuant to CPR 52.21(3)(a). Allianz therefore seeks an order reversing the Learned Judge’s decision and granting summary judgment pursuant to CPR 24.3 in relation to all defects alleged by Vivid on the basis that there was (and is) no real prospect of successfully proving that any of those defects gave rise to a “*threat of imminent destruction or physical damage... which requires immediate remedial measures for the prevention of destruction or physical damage*”.

Relevant Background

8. Vivid is the freehold owner of a block of 72 flats at Collins Place, 189 Victoria Road North, Portsmouth, Hampshire, PO5 1AE (the “**Premises**”).
9. Allianz is the underwriter of a Housing Warranty Insurance Policy in favour of Vivid with policy number UX10826507148 (the “**Policy**”). The Policy was provided by Building LifePlans Limited, acting as a cover-holder under a binding authority granted by Allianz. A copy of the Policy is included in the appeal bundle at [CB/14/138] onwards.
10. Vivid issued these proceedings against Allianz on 22 December 2023 with claim number HT-2023-000476 (the “**Proceedings**”). The Claim Form (at [CB/11/102-106]) and Particulars of Claim (at [CB/11/107-115]) were served on 17 April 2024.
11. In the Proceedings, Vivid claims an indemnity under the Policy for the costs of rectifying five alleged defects in the Premises. Those alleged defects are described at [Judgment/5] [CB/7/80] and may be summarised as follows:

- 11.1. Defect 1: installation of combustible Rockpanel cladding, which is said to have provided a vehicle for the spread of fire and/or smoke around the entire external envelope of the Premises;
 - 11.2. Defect 2: absence of vertical cavity barriers, which is said to have provided a route for fire and/or smoke to spread unseen and uninhibited around the Premises;
 - 11.3. Defect 3: absence of (or defectively installed) horizontal cavity barriers, which is said to have provided a route for fire and/or smoke to spread unseen and uninhibited around the Premises;
 - 11.4. Defect 4: inadequate cladding bracketry, which is said to have caused a risk of detachment of the cladding panels and/or physical damage; and
 - 11.5. Defect 5: combustible debris left within building cavities, which is said to have provided an ignition source and/or would have permitted the spread of fire throughout the Premises.
12. Each of Defects 1 to 3 and 5 may therefore be described as ‘passive’ fire safety defects; that is, they are defects related to fire safety which are not likely to cause a fire to ignite by themselves but whose (alleged) existence may contribute to a fire which has started independently growing and/or spreading further or faster than might otherwise be the case.
 13. Remedial work in respect of the alleged defects is said to have been carried out by Vivid between 22 March 2021 and April 2023. The total cost of addressing the alleged defects is said to have been approximately £4.2 million. Vivid claims the full sum of approximately £4.2 million from Allianz in respect of each of the alleged defects, as well as all of them collectively, on the basis that the full scope of works would have been required to address any of them individually.
 14. Allianz filed its Defence in the Proceedings on 12 June 2024 (at **[CB/12/122-131]**) and Vivid filed its Reply on 30 July 2024 (at **[CB/13/132-137]**).
 15. By means of an Application Notice dated 14 January 2025 (at **[SB/2/8-12]**), Allianz applied for summary judgment pursuant to CPR 24.3 on the whole of Vivid’s claim against it on the grounds set out in the attached witness statement of Tobias Paul Rogers

(at [SB/3/13-26]). There was a one-day hearing of Allianz's application before the Learned Judge on 22 July 2025.

16. In the Order, which was sealed on 16 December 2025 [CB/6/75-77], and the Judgment, which was handed down remotely on 18 December 2025 [CB/7/78-91], the Court granted Allianz's application for summary judgment in relation to Defect 4 only (see [Judgment/57-59] [CB/7/90]) but refused the application insofar as Defects 1 to 3 and 5 were concerned (see [Judgment/61] [CB/7/91]).
17. In this appeal, Allianz contends that the Learned Judge was wrong to have refused its application in relation to Defects 1 to 3 and 5. Allianz maintains that Vivid has no real prospect of success on any of the five alleged defects, such that Allianz is entitled to summary judgment on the whole of the claim against it.

Relevant Policy Terms

18. The "Operative Clause" in the Policy is clause 3(a), which provides as follows (at [CB/14/146]):

"The Insurers agree to indemnify the Insured against the cost of repairing, replacing, and/or strengthening the Premises following and consequent upon a Defect which becomes manifest and is notified to Insurers during the Period of Insurance and not excluded herein causing any of the following events:

- (i) destruction of the Premises; or*
- (ii) physical damage to the Premises; or*
- (iii) the threat of imminent destruction or physical damage to the Premises which requires immediate remedial measures for the prevention of destruction or physical damage within the period of insurance."*

19. The Policy includes a number of defined terms, including as follows (at [CB/14/144 - 145]):

- 19.1. "Defect" is defined as:

"Any defect in the Structural Works notified to the Insurers during the Period of Insurance which is attributable to a defect in design workmanship or materials which was not manifest at the Date of Inception..."

19.2. “Structural Works” is defined as:

“All internal and external load-bearing structures essential to the stability, strength or weatherproof integrity of the Premises; and drains, internal walls and windows, plaster, ceilings, staircases, internal floor decking and screeds, chimneys and flues...”

20. Section 4 of the Policy, titled “POLICY EXCLUSIONS”, contains the following exclusion (at [CB/14/148]):

(a) *This Policy does not cover any destruction, physical damage or imminent destruction or physical damage caused by, arising from, or consequent upon:*

...

(iv) *fire, lightning, explosion, earthquake, storm, tempest, flood, frost, bursting or overflowing of water tanks, pipes or other apparatus, water discharge or leaking from an automatic sprinkler installation, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, the impact of aircraft or other aerial devices or articles dropped or falling therefrom or the impact of any other vehicle whether licensed or not*

...

(ix) *subsidence, heave or landslip unless due to a Defect...”*

21. Section 5 of the Policy, titled “POLICY CONDITIONS / PROVISIONS / GENERAL CONDITIONS”, contains the following provision (at [CB/14/150]):

“The Insured will

...

(ii) *At their or the occupier’s own expense, take all reasonable precautions to prevent destruction or physical damage to the Premises and shall comply with building or other regulations under or framed in pursuance of any act of Parliament or with bye-laws of any Public or Local Authority which relate to the Premises...”*

22. At Section 8, the Schedule to the Policy (at [CB/14/154]) provides that the Period of Insurance ran for 12 years from the Date of Inception. The Date of Inception was specified by Endorsement (at [CB/14/162]) to be 22 May 2008. Accordingly, the Policy ran from 22 May 2008 until 21 May 2020. s

23. The Policy Schedule also referred to a number of potential “*Extensions*”, in the following terms (at [CB/14/154]):

<i>Extensions Applicable</i>	
<i>Component Failure</i>	<i>Yes</i>
<i>Health and Safety</i>	<i>No</i>
<i>Contaminated Land</i>	<i>No</i>

24. Certain facts which formed (on Allianz’s case) part of the admissible factual matrix in relation to the Policy are common ground between the parties, having been pleaded in the Defence and admitted in the Reply: see paragraphs 18 to 24 of Mr Roger’s witness statement in this respect (at [SB/3/17-19]). Essentially, it is common ground between the parties that Vivid could have obtained a “*Health and Safety Extension*” to the Policy but did not do so. Further details as to this part of the admissible factual matrix are set out at [Judgment/52-56] [CB/7/89-90].

Parts of the Judgment which are Not Challenged on Appeal

25. Allianz accepts and agrees with many of the approaches adopted and findings made by the Learned Judge in the Judgment. It is Allianz’s contention that, having apparently adopted the correct test for the meaning of “*imminent*” in clause 3(a)(iii) of the Policy, the Judge fell into error at what was effectively the final stage by mis-applying that test in the context of ‘passive’ fire safety defects, such as those alleged by Vivid.
26. Accordingly, Allianz does not take issue with many parts of the Judgment, including as follows:
- 26.1. The Learned Judge correctly identified the “*risk insured*” by clause 3(a)(iii) of the Policy as being “*a (manifest) Defect which causes (a) the threat (b) of imminent destruction or physical damage (c) which requires immediate remedial measures (d) for the prevention of destruction or physical damage within the Period of Insurance*”: see [Judgment/17] [CB/7/83].

- 26.2. The Learned Judge correctly identified that the relevant “*threat*” for purposes of clause 3(a)(iii) of the Policy “*must be not only of destruction or physical damage but of imminent destruction or physical damage*” (underlined emphasis original): see [Judgment/22] [CB/7/84].
- 26.3. The Learned Judge correctly identified that, as Allianz had contended (see [Judgment/12(ii)] [CB/7/82]), the “*normal usage of the word ‘imminent’*” incorporated a “*temporal element*”, i.e. it required “*considering whether on the facts available at the relevant time a reasonable man would regard the damage in question as sufficiently likely to happen sufficiently soon...*”: see [Judgment/26 and 29] [CB/7/84-85], citing the judgment of Christopher Clarke J in Gerling General Insurance Co and others v. Canary Wharf Group plc,¹ at [55].
- 26.4. The Learned Judge correctly identified that an interpretation of “*imminent*” as incorporating a “*temporal element*” was supported by the judgment of His Honour Judge Stephen Davies in Zagora Management Ltd v. Zurich Insurance plc,² and that a concession which the parties had made in that case regarding the absence of cavity barriers “*was simply a concession and of limited relevance to the present case*”: see [Judgment/35-36] [CB/7/86].
- 26.5. Although she did not expressly set out the relevant test for summary judgment in the Judgment, the Learned Judge appears to have had in mind the correct test (having considered whether Vivid’s case “*on the construction of the policy clause and whether the policy responds has a real prospect of success*”: see [Judgment/61] [CB/7/91]) and plainly considered that Allianz’s application raised matters which were suitable for summary determination (as Allianz maintains they are).³

¹ [2005] EWHC 2234 (Comm); [2006] 1 Lloyd’s Rep 68.

² [2019] EWHC 257 (TCC).

³ If and insofar as may be required, Allianz will refer to and rely on the well-known principles applicable to summary judgment applications, including as summarised by Lewison J (as he then was) in Easyair Ltd (t/a Openair) v. Opal Telecom Ltd [2009] EWHC 339 (Ch), at [15], and subsequently approved by the Court of Appeal in AC Ward & Sons Ltd v. Catlin

27. Having made all of the correct findings set out above, Allianz contends that the Learned Judge then fell into error by mis-applying the “*imminent*” test in the specific context of fire safety defects; in particular, the Learned Judge effectively removed any (or any meaningful) requirement for there to be a “*temporal element*” to the risk of damage or destruction by adopting the premise that “*the threat of fire is constant*” and so “*there is always a threat of imminent damage or destruction by fire*”: see [Judgment/43] [CB/7/88].

Allianz’s Ground of Appeal and Sub-Issues

28. As set out in the document attached to its Appellant’s Notice, Allianz relies on a single Ground of Appeal [CB/1/15-16], which is that the Learned Judge erred in law by construing clause 3(a)(iii) of the Policy in such a way that damage or destruction by fire is always “*imminent*” and that “*immediate remedial works*” are always likely to be necessary in relation to the same, meaning that it could not be said that Vivid had no real prospect of success in relation to the sort of ‘passive’ fire safety defects alleged in the Proceedings.
29. There are a number of sub-issues which fall within this single Ground of Appeal, however, which are set out in detail in the remainder of this Skeleton Argument but which may be summarised, for convenience, as follows:
- 29.1. The Learned Judge erred in law by effectively removing the essential “*temporal element*” from the proper interpretation of the word “*imminent*” in clause 3(a)(iii) of the Policy (or failing to give any or any meaningful effect to the same);
- 29.2. The Learned Judge erred in law by placing unjustified reliance on what was purported to be the correct (or incorrect) “*commercial construction*” of clause 3(a)(iii) of the Policy instead of applying the natural or ordinary meaning of the words used in that clause;
- 29.3. The Learned Judge erred in law by failing to give any or any adequate weight to the role which the words “*imminent*” and “*immediate*” in clause 3(a)(iii) of the

(*Five*) Ltd [2009] EWCA Civ 1098; [2010] Lloyd’s Rep IR 301, at [24]. Those principles are also set out in paragraph 24.3.2 of the White Book 2026, Volume 1.

Policy were objectively intended to have in terms of minimising or limiting the potential exposure of the insurer;

29.4. The Learned Judge erred in law by failing to give any or any adequate weight to the fact that the Policy excludes cover (including in relation to “*imminent destruction or physical damage*”) where a (or the) proximate cause of loss is “*fire*”; and

29.5. The Learned Judge erred in law by mis-applying the nature and/or extent of certain assumptions (or concessions) made by Allianz for the purposes of its summary judgment application (particularly in relation to the “*fire*” exclusion and whether the defects alleged by Vivid in the Proceedings constitute “*Defects*” under the terms of the Policy).

30. The remainder of this Skeleton Argument will address each of the sub-issues to Allianz’s single Ground of Appeal in turn.

Sub-Issue 1: the “Temporal Element” in the Proper Construction of “Imminent”

31. As noted above, Allianz’s position is that the Learned Judge identified (at [Judgment/29] [CB/7/85]) the correct test for whether something can be considered “*imminent*” and, in particular, that there must be a “*temporal element*”, i.e. the risk in question must be something which is both “*sufficiently likely*” to happen and likely to happen “*sufficiently soon*”. In this respect, the Learned Judge effectively adopted the meaning of “*imminent*” as set out by Christopher Clarke J in the Gerling case, cited above, at [55]:

“... the question of whether damage is imminent is, at any rate in the first instance, to be considered prospectively, and objectively, that is to say by considering whether on the facts available at the relevant time a reasonable man would regard the damage in question as sufficiently likely to happen sufficiently soon that it should be described as imminent.”

32. In holding that the meaning of “*imminent*” included a “*temporal element*” (the “*sufficiently soon*” part of the test), the Learned Judge accepted Allianz’s proposed construction of clause 3(a)(iii), as recorded in [Judgment/12(ii)] [CB/7/82].

33. By contrast, the test proposed by Vivid was that there need only be “*a realistic prospect that physical damage may occur which required immediate remedial measures to be*

prevented”: see [Judgment/15] [CB/7/83]. Defects 1 to 3 and 5 were said to meet this test because they “*made the development vulnerable to physical damage in the event of fire, giving rise to a realistic prospect that imminent physical damage, at the least, might occur*”: see [Judgment/15(i)] [CB/7/83]. Accordingly, Vivid’s proposed formulation took no account of any “*temporal element*” in the test for what can be considered “*imminent*”.

34. Having accepted the test advanced by Allianz, and rejected the one proposed by Vivid, it is Allianz’s contention that the Learned Judge then mis-applied that test in relation to the particular risk posed by fire, such that she effectively reverted to Vivid’s proposed formulation and removed any requirement for destruction or damage to be truly “*imminent*” where fire safety defects were concerned.
35. The Learned Judge appeared to accept Allianz’s contention that “*although Vivid had had months in which to present evidence in opposition to this application, they had adduced no factual or expert evidence that there was any aspect of the alleged Defects which made the prospect of a fire (and consequent damage) imminent*”, albeit she seemed concerned that “*the effect of that argument is that it is Allianz’s case that the policy would only respond to Defects (that for the purposes of this application are assumed to exist) if there was some particular aspect of the property or the Defect that made the ignition of a fire imminent*”: see [Judgment/41] [CB/7/87].
36. It is correct that this is (and was) Allianz’s case where fire safety defects are concerned. Such defects can only be considered to cause (or contribute to) damage or destruction where a fire has actually started and so such damage or destruction can only be considered “*imminent*” (both within the normal and ordinary usage of that term and as per the test formulated by Christopher Clarke J in Gerling) where such a fire is likely to break out soon, or indeed where the nature of the defect is such that it is likely to cause a fire (an example might be where a particular material is found to melt or ignite when exposed to prolonged sunlight – assuming that to be a normal or common state of affairs in the United Kingdom – or where a glass structure focuses sunlight on another part of the property in such a way that ignition is likely to occur).
37. However, it does not accord with ordinary and normal language, nor with the “*imminent*” test from Gerling, to hold (as the Learned Judge did) that damage or destruction by fire

is always likely to happen and/or that it is always likely to happen “*sufficiently soon*”. Leaving aside some sort of ‘active’ fire safety defect (which gives rise to a risk of fire ignition as envisaged in the previous paragraph), no reasonable person would consider it *likely* that a fire will break out and cause damage or destruction to property at any given time and certainly not *soon*.

38. Accordingly, by holding that “*there is always a threat of imminent damage or destruction by fire*” in [Judgment/43] [CB/7/88], the Learned Judge wrongly removed (or rendered nugatory) the requirement in clause 3(a)(iii) of the Policy for such damage or destruction to be “*imminent*”. The Learned Judge recognised this consequence herself, saying (also at [Judgment/43] [CB/7/88]): “*on one view, it would seem to take away or omit any consideration of whether the threat of destruction or damage is likely to occur sufficiently soon.*” This is indeed the effect of the Learned Judge’s decision and Allianz says it was wrong in law as a result.

Sub-Issue 2: the Purported “Commercial Construction” of the Policy

39. As explained above, despite having recognised that a construction of clause 3(a)(iii) of the Policy where “*there is always a threat of imminent damage or destruction by fire*” would “*seem to take away omit any consideration of whether the threat of destruction of damage is likely to occur sufficiently soon*”, the Learned Judge purported to justify this outcome on the basis that “*it would not be a commercial construction of the policy if the insured had to demonstrate an imminent threat of fire in the sense of a fire about to break out...*” It was said that if the Policy was construed in this way then “*it is difficult to see how the policy would ever respond to the risk of fire*”: see [Judgment/43] [CB/7/88].
40. Allianz contends that the Learned Judge’s analysis therefore appears to have proceeded from the false premise that any and every fire safety defect which falls within the definition of “*Defect*” in the Policy (or at least the alleged defects in the present case, which were assumed for the purposes of the application to fall within that definition) must be covered under the Policy and indeed under every ‘limb’ in the Policy’s “*Operative Clause*”, including clause 3(a)(iii) in particular.
41. To the contrary, however, it is not to be assumed that there is cover under clause 3(a)(iii) for everything which counts as a “*Defect*” under the terms of the Policy. Indeed, it is

extremely unlikely that every such “*Defect*” (whether concerned with fire safety or otherwise) will give rise to a threat of “*imminent destruction or damage*”.

42. If, therefore, a certain type of “*Defect*” – such as the sort of ‘passive’ fire safety defects alleged in the present case (absent cavity barriers, etc.) – will not give rise to cover under clause 3(a)(iii) of the Policy either at all or only in certain limited, and possibly even unusual, situations, that is no reason to ‘read out’ specific requirements in the insuring provision (i.e. the requirement for damage to be “*imminent*” in the sense that it is likely to be caused “*sufficiently soon*”) so as to achieve the result that every such “*Defect*” will always be covered under clause 3(a)(iii).
43. In this respect, the Learned Judge’s approach to clause 3(a)(iii) of the Policy where fire safety defects are concerned would appear to lead to the conclusion that any defect which (i) is concerned with fire safety and (ii) falls within the definition of “*Defect*” in the Policy will always automatically be covered under clause 3(a)(iii) of the Policy, no matter how serious or trivial the defect in question, from the moment it is discovered. Contrary to the implication made at **[Judgment/43] [CB/7/88]**, this is not a commercially sensible construction of clause 3(a)(iii) of the Policy, particularly when it is borne in mind that words such as “*imminent*” are objectively intended to minimise the insurer’s exposure and that the Policy contains a general exclusion where the (or a) proximate cause of loss is “*fire*”.
44. Allianz therefore contends that the Learned Judge fell into error by proceeding from the starting point that there must be cover for all “*Defects*” (or at least those which are concerned with fire safety) under clause 3(a)(iii) of the Policy. This approach is not justified as a matter of law and may indeed have unintended consequences for the wider insurance industry. Allianz notes, and endorses, certain passages from the Commentary included at the start of the relevant Building Law Report for *Manchikalapati and others v. Zurich Insurance plc*,⁴ which cautioned that “*there is a very real danger in proceeding from the starting point that the role of an insurer – or the commercial purpose of such policies – is simply to pay out... it must be recognised that insurance policies are, and*

⁴ [2019] EWCA Civ 2163; [2020] 1 BLR 1, at 4-6. This was the appeal from His Honour Judge Stephen Davies’ judgment in *Zagora*, cited above and so concerned a ‘latent defects’ policy similar to the Policy in the present case.

have always been, a carefully and delicate balance of risk allocation, which must be respected if the availability of these policies is to continue” and that “the purpose of the policy is to pay out in certain carefully defined circumstances.”

45. In the present case, clause 3(a)(iii) of the Policy provided cover in just such “*carefully defined circumstances*”, namely where there was a threat of “*imminent*” destruction or damage (in the sense initially accepted by the Learned Judge, i.e. such destruction or damage must be both *likely to happen* and *likely to happen sufficiently soon*) and where “*immediate remedial measures*” were required to prevent such destruction or damage “*within the Period of Insurance*”.
46. By effectively ‘reading out’ these clear requirements from clause 3(a)(iii) in favour of a purported “*commercial construction*” of the Policy whereby damage or destruction by fire was always deemed to be “*imminent*” and as always requiring “*immediate remedial measures*”, Allianz contends that the Learned Judge failed to apply the principles of proper contractual interpretation which are relevant in construing contracts such as the Policy.
47. In this respect, Allianz accepts that the Learned Judge did identify (and purport to apply the principles from) one of the leading authorities on the construction of insurance policies, namely the decision of the UK Supreme Court in *Financial Conduct Authority v. Arch Insurance (UK) Ltd*,⁵ (see [Judgment/18] [CB/7/83]), but she apparently failed to take any or any sufficient account of other authorities which are more closely concerned with questions of “*commercial common sense*” and the role that such “*commercial*” considerations may legitimately have in construing contract terms.⁶

⁵ [2021] UKSC 1, at [47].

⁶ This is not to say that commercial considerations were irrelevant in the *FCA* case but those which the Supreme Court relied upon were based on the express language used by the parties. At [194]-[195], for example, the majority (Lords Hamblen and Leggatt) noted that, in providing cover for infectious diseases, the “*parties to the insurance contracts may be presumed to have known that some infectious diseases... can spread rapidly, widely and unpredictably...*” and, this being the case, it was “*contrary to the commercial intent of the clause to treat uninsured cases of a notifiable disease occurring outside the territorial scope*

48. In particular, the UK Supreme Court held in *Arnold v. Britton*,⁷ at [17], that “*the reliance placed on commercial common sense and surrounding circumstances... should not be invoked to undervalue the importance of the language of the provision which is to be construed*” and, at [20], that “*a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks they should have agreed.*”
49. In Allianz’s respectful submission, the effect of the Learned Judge’s analysis at **[Judgment/43] [CB/7/88]**, and her invocation of what was perceived to be a “*commercial construction*” or otherwise, was that the ordinary and natural meaning of the words used in clause 3(a)(iii) of the Policy – and the words “*imminent*” and “*immediate*” in particular – were rejected, undervalued and/or departed from, contrary to the principles of contractual interpretation set out by the UK Supreme Court in *Arnold*, above.
50. Allianz submits, therefore, that the Learned Judge was not justified in effectively removing (or rendering nugatory) the requirement for damage or destruction to be “*imminent*” where fire is concerned, whether for reasons of purported “*commercial construction*” or otherwise, and should have applied the “*imminent*” requirement in full, including its “*temporal element*”, just as with any other type of defect.

of the cover as depriving the policyholder of an indemnity in respect of interruption also caused by cases of disease which the policy is expressed to cover...” (underlined emphasis added). In the present case, by contrast, neither the Policy generally nor clause 3(a)(iii) in particular expressly referred to there being cover for health and safety risks – such as those which may possibly be posed by ‘passive’ fire safety defects – other than in the Health and Safety Extension, of course, which Vivid did not select and which is considered further below.

⁷ [2015] UKSC 36; [2015] AC 1619, per Lord Neuberger PSC (with whom Lord Sumption and Lord Hughes JJSC agreed).

51. Moreover, the outcome ultimately reached by the Learned Judge, which effectively means that any “*Defect*” which is in any way concerned with fire safety will trigger cover under clause 3(a)(iii), is not a “*commercial construction*” at all; it is quite the opposite.

Sub-Issue 3: the Limiting Role of “*Imminent*” and “*Immediate*”

52. There is a significant degree of overlap between this third sub-issue and the “*commercial construction*” sub-issue addressed above. In short, Allianz contends that the Learned Judge was wrong effectively to remove the “*imminent*” requirement on the basis that it did not produce a “*commercial construction*”, particularly when the very purpose of the word “*imminent*” in clause 3(a)(iii) was objectively intended to have a limiting effect on Allianz’s potential exposure under that clause.
53. This ‘limiting’ aspect of the usage of “*imminent*” was expressly recognised by Christopher Clarke J in the *Gerling* case, cited above, at [37]:

“‘*Imminent*’ must be interpreted having regard to the object of the extension which is to minimise the potential exposure of the insurers.”

54. So too in the present case was the addition of the word “*imminent*” to clause 3(a)(iii) intended to minimise, or to limit, the potential exposure of Allianz under that provision; that is, it was not just the threat of destruction or physical damage at any time which triggered cover but rather the threat of “*imminent*” destruction or physical damage. This wording was deliberately (and objectively) used to limit the range of circumstances in which cover would be available to the insured under clause 3(a)(iii) of the Policy.
55. Accordingly, by effectively removing the “*imminent*” requirement from clause 3(a)(iii) where fire is concerned, and so holding that any “*Defect*” related to fire safety would engage cover under that clause, the Learned Judge adopted a construction which was not “*commercial*” under the terms of the Policy but was in fact directly contrary to the reason why the word “*imminent*” had been included in that clause in the first place.
56. Allianz makes a similar criticism in relation to the Learned Judge’s treatment of the further requirement in clause 3(a)(iii) that the threat of imminent destruction or damage is such that it “*requires immediate remedial measures for the prevention of destruction or physical damage within the Period of Insurance*”.

57. Although the Learned Judge correctly identified that this was a separate, additional “limb” to the “imminent” part of the clause (see **[Judgment/47] [CB/7/88]**), the Learned Judge’s error in relation to the construction of the first limb led her into error on the second limb as well. In this respect, the Learned Judge said at **[Judgment/48] [CB/7/88-89]** that “*if the threat is one of imminent destruction or physical damage, it is difficult to envisage a case where that would not necessitate immediate repair or, as a minimum, mitigating measures pending repair*”.
58. Where a fire safety defect (of any sort) was concerned, therefore, the Learned Judge’s incorrect finding that “*there is always a threat of imminent damage or destruction by fire*” (see **[Judgment/43] [CB/7/88]**) on the first limb led her to conclude, on the second limb, that “*remedial works to prevent that occurring within the period of the policy would be necessary and most probably necessary immediately*”: see **[Judgment/49] [CB/7/89]**.
59. In the present case, however, it is common ground that Vivid did not carry out any repairs or remedial works of any sort prior to the end of the Period of Insurance (on 21 May 2020). Vivid notified its claim under the Policy on or about 19 May 2020, just two days before the expiry of the Period of Insurance. In its ‘Latent Defect Claim Form’ (at **[SB/8/203-205]**), it answered the question of whether “*urgent repairs are required*” with “N/A” **[SB/8/204]**. Accordingly, even as late as two days before the end of the Period of Insurance, it could not be said (and indeed Vivid did not say) that “*urgent repairs*” were required, even though Vivid had (again, on its own case) been aware of the defects in question since August 2019: see question 2 on the ‘Latent Defect Claim Form’ at **[SB/8/204]**.
60. It is also common ground between the parties, and was recorded in the same ‘Latent Defect Claim Form’, at **[SB/8/204]**, that the only measures which Vivid took in relation to the alleged defects prior to the end of the Period of Insurance was to put in place a “*waking watch*”. The Learned Judge referred to this “*waking watch*” several times in the Judgment and Allianz respectfully submits that she drew the wrong conclusions from it.
61. First, when considering whether the threat of destruction or damage by fire was “imminent” at **[Judgment/42] [CB/7/87-88]**, the Learned Judge noted Allianz’s submissions that Vivid’s “*notification identified no urgent repairs and that no remedial works had been undertaken... but only the waking watch*” but said that she did not find

them material and/or decisive. She then stated that the “*waking watch, if anything seems to me, to point the other way and to reflect the concern that if a fire broke out the consequences could be catastrophic damage both to persons and property which is more consistent with a threat of imminent destruction or damage*”.

62. Allianz contends that, in this respect, the Learned Judge failed properly to distinguish between a risk which was “*imminent*” – in the sense that destruction or damage by fire was likely to occur “*sufficiently soon*” – and the potentially catastrophic consequences if (however unlikely) a fire was indeed to break out at some point. The engagement of a “*waking watch*” in relation to a particular property may well indicate that the consequences of a fire may be catastrophic (in terms of risk to life, etc.) but it does not say anything about whether a fire is likely to happen “*soon*”.
63. Second, when considering whether the risk of destruction or damage by fire “*requires immediate remedial measures for the prevention of destruction or physical damage within the Period of Insurance*” at [Judgment/50] [CB/7/89], the Learned Judge appeared to view the “*waking watch*” as a relevant “*immediate remedial measure*”, since she said that “*it also has the effect of preventing or ameliorating the risk of fire spreading sufficiently to cause destruction or damage thereby delaying the need to carry out the remedial works.*”
64. Allianz submits, however, that a “*waking watch*” is not an “*immediate remedial measure*” of the type objectively envisaged by the Policy, not least because no such measure is “*require[d]*” in order to prevent destruction or damage to the Premises, whether within the Period of Insurance or at all. The purpose of a “*waking watch*” is to raise the alarm, and therefore alert residents, in the (possibly wholly unlikely) event of a fire breaking out. A “*waking watch*” is not intended to, and it is certainly not *required* to, prevent damage to the Premises occurring in the near future (i.e. “*soon*”).
65. Accordingly, the Learned Judge failed to give any or any adequate recognition and/or weight to the requirements in clause 3(a)(iii) of the Policy that, for cover to be engaged thereunder, damage or destruction caused by the alleged defects must be “*imminent*” and that “*immediate remedial measures*” must be “*require[d]*” to prevent such damage or destruction “*within the Period of Insurance*”.

Sub-Issue 4: the “Fire” Exclusion

66. This further sub-issue also overlaps with the submissions made in relation to the purported “*commercial construction*” of clause 3(a)(iii) of the Policy above. It is a short point, which is that the Policy contained an exclusion for loss where the (or a) proximate cause was “*fire*” [CB/14/148].
67. In light of this exclusion, which means that even where there are multiple proximate causes of damage to the Premises, if at least one of those proximate causes is “*fire*”, such damage will not be covered under the Policy. This is the effect of the well-known principle from Wayne Tank and Pump Co Ltd v. Employers Liability Assurance Corporation Ltd.⁸
68. While Allianz did not (and does not) rely on that exclusion directly in its summary judgment application (i.e. Allianz does not contend that any “*Defect*” which is concerned with fire safety will be automatically excluded from cover under clause 3(a)(iii) of the Policy), its existence in the Policy is or should be of at least some significance in construing clause 3(a)(iii) of the Policy; that is, it would be extremely odd if a Policy which excluded all cover where “*fire*” was the (or a) proximate cause of loss nevertheless provided cover for each and every “*Defect*” which was in any way concerned with fire safety on the basis that the risk of damage or destruction by fire was always imminent and always required immediate remedial measures to be taken.

Sub-Issue 5: Assumptions made by Allianz in the Application

69. As the Learned Judge recorded in her Judgment, at [Judgment/6] [CB/7/81], Allianz asked the Court to determine its application for summary judgment on the assumption that each of the defects alleged by Vivid fell within the definition of “*Defect*” in the Policy. For the avoidance of doubt, this assumption was made for the purposes of the summary judgment application only.
70. However, it appears that this assumption may have led the Learned Judge into error insofar as her construction of clause 3(a)(iii) was concerned because she recorded, at [Judgment/45] [CB/7/88], that her conclusion in [Judgment/43-44] [CB/7/88] (i.e. that

⁸ [1974] QB 57.

“there is always a threat of imminent damage or destruction by fire... [Otherwise,] it is difficult to see how the policy would ever respond to the risk of fire...” was *“driven by the very specific nature of fire and its causes and the factual assumption for the purposes of this application that the Defects are defects in the structural works within the meaning of the policy”* (underlined emphasis added).

71. As mentioned above, however, the fact that something may qualify as a “*Defect*” within the definition of that term in the Policy does not mean that it will give rise to cover under any, let alone every, insuring provision in the Policy. In this respect, it was no part of Allianz’s assumption (or concession) that any of the defects alleged by Vivid should or would be covered under any part of the Policy, including clause 3(a)(iii) in particular, merely that (for the purposes of the application) they should be treated as “*Defects*” which may give rise to cover provided the relevant requirements of any given insuring provision are also met (which of course Allianz contends is not the case in relation to clause 3(a)(iii)).
72. Similarly, Allianz did not rely on the “*fire*” exclusion, discussed above, for the purposes of its summary judgment application – but that did not mean that the exclusion was entirely irrelevant to the proper construction of the Policy, including clause 3(a)(iii) in particular. For the reasons set out in the preceding section of this Skeleton Argument, the “*fire*” exclusion is relevant insofar as it indicates or suggests that the purported “*commercial construction*” of clause 3(a)(iii) of the Policy adopted by the Learned Judge was not correct.
73. Finally, Allianz also accepted (again, for the purposes of its summary judgment application) that the Health and Safety Extension did not form part of the Policy but did not concede that such Extension was irrelevant as a result. To the contrary, and as the Learned Judge acknowledged at [**Judgment/55**] [**CB/7/90**], Allianz expressly submitted that the Health and Safety Extension formed part of the background knowledge which would reasonably have been available to the parties when they entered into the Policy and was therefore part of the commercial context which the Court should have taken into account when construing the Policy.
74. For the avoidance of doubt, this commercial context was that, had it been selected and paid for by Vivid, the Health and Safety Extension may well have covered the sort of fire

safety defects alleged in the present case, i.e. defects which posed a “*present or imminent danger to the Health and Safety of the occupants of the Premises and repair, replacement or rectification is required to comply with the Building Regulations applicable at the time of construction or conversion.*” There are obviously very significant differences between this sort of cover and that provided by clause 3(a)(iii) of the Policy – with the former applying to a “*present or imminent danger*” rather than the threat of “*imminent destruction or physical damage*” and requiring “*repair, replacement or rectification... to comply with the Building Regulations*” as opposed to “*immediate remedial measures for the prevention of destruction or physical damage within the Period of Insurance.*”

75. In paragraph 2 of her “*Reasons for allowing or refusing permission to appeal*”, at [CB/8/92], the Learned Judge referred to each of the assumptions (or concessions, as she described them) identified above. She then said, at paragraph 3:

“Central to the [Judgment] was the difficulty of identifying any circumstances in which the operative cause would respond if [Allianz’s] arguments were right. In seeking permission to appeal, [Allianz] argued that was unsurprising if the policy were considered as a whole. That argument brought back into play the matters that had been conceded (para. 2 above).”

76. As explained above, however, none of Allianz’s assumptions (or concessions) should properly have led the Court to adopt a construction of clause 3(a)(iii) which was based on a purported “*commercial construction*” of clause 3(a)(iii) that could not (and cannot) be justified either by the wording of clause 3(a)(iii) itself or by the terms of the Policy more broadly (including the “*fire*” exclusion, for example).

Conclusion and Order Sought

77. For all of the reasons set out above, Allianz respectfully requests the Court of Appeal to rule in its favour on its single Ground of Appeal and so reverse the Learned Judge’s determination that Allianz was not entitled to summary judgment in relation to Defects 1 to 3 and 5.
78. Accordingly, the Court of Appeal is requested to make an order (pursuant to CPR 52.20(2)) to the effect that Allianz shall be granted summary judgment on the whole of Vivid’s claim against it.

79. Allianz also seeks an order requiring Vivid to pay Allianz's costs of the claim overall (including the costs of its application for summary judgment, both on appeal and below).
80. By means of the Learned Judge's order dated 7 April 2026, Allianz was required to pay Vivid's costs of the summary judgment application in the total sum of £48,400. Allianz has paid this sum to Vivid (in certain tranches). If Allianz is successful in this appeal, it also seeks an order requiring Vivid to repay this sum to Allianz, along with interest (at the proposed commercial rate of 5% per annum, or such other rate as the Court of Appeal considers appropriate) from the date(s) on which Allianz made payment of those costs to Vivid. The Court of Appeal has the power to order that the repayment of costs should include interest (see *Multiplex Constructions (UK) Ltd v. Cleveland Bridge UK Ltd*,⁹ and the CPR provisions referred to therein) and is invited to exercise that power in this case so as to compensate the Defendant for having lost the ability to earn interest on the money paid as costs from the date(s) on which those costs were paid up to the present.
81. Insofar as the Learned Judge made orders to the contrary, they should be set aside or varied as appropriate.
82. Further submissions will be made orally as may assist the Court of Appeal.

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3 September 2026

⁹ [2008] EWCA Civ 133; (2008) 118 Con LR 16.