

Neutral Citation Number: [2023] EWHC 793 (Ch)

Case No: BL-2017-000665

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 30 March 2023

Before :

Mr Justice Trower

Between :

JSC Commercial Bank “PrivatBank”
- and -

Claimant

- (1) Igor Valeryevich Kolomoisky**
(2) Gennadiy Borisovich Bogolyubov
(3) Teamtrend Limited
(4) Trade Point Agro Limited
(5) Collyer Limited
(6) Rossyn Investing Corp
(7) Milbert Ventures Inc
(8) ZAO Ukrtransitservice Ltd

Defendant

Robert Anderson KC, Andrew Hunter KC, Tim Akkouch KC, Christopher Lloyd, Catherine Jung, David Baker and Conor McLaughlin, (instructed by Hogan Lovells) for the Claimant

Mark Howard KC, Michael Bools KC, Alec Haydon KC and Geoffrey Kuehne (instructed by Fieldfisher) for the First Defendant

Clare Montgomery KC, Nathaniel Bird and Alyssa Stansbury (instructed by Enyo Law LLP) for the Second Defendant

Mr Thomas Plewman KC and Marc Delehanty (instructed by Pinsent Masons) for the Third to Eighth Defendants

Hearing dates: **30th March 2023**

APPROVED JUDGMENT

Mr Justice Trower
(10:32am)

Thursday, 30 March 2023

Judgment by **MR JUSTICE TROWER**

1. The first defendant seeks to amend his re-re-re-re-re-amended defence. The bank did not resist the majority of the amendments by number, although it took that position only after there were a number of minor clarifications to the original draft produced by the first defendant. There are, however, two principal categories of amendment which are opposed. They are the proposed currency amendments at paragraphs 83C to 83I of the draft, and the proposed Ukrainian law / proceedings amendments at paragraphs 87A to 88 of the draft.
2. On an application such as the present one, the overarching question for the court is how does the balance of justice and injustice fall, having regard to the overriding objective? In answering that question the court will have regard to the fact that, on any view, these are amendments which can properly be described as late amendments. This is partially because the trial is now just over two months away having taken a long time to get to this stage. They were commenced in December 2017 and got going properly after the Court of Appeal's decision in October 2019. But it is also because the proposed amendments could have been advanced earlier. This was not disputed by the first defendant anywhere in the sense that it was not said that there was any particular impediment in pleading either of these issues several years ago.
3. The approach to take on an application for permission to make late amendments was recently and authoritatively restated by Birss LJ in *ABP Technology v Voyetra* [2022] EWCA Civ 594, approving at paragraphs 23 to 24 of his judgment the principles summarised by Coulson J in *CIP Properties v Galliford Fry* [2015] EWHC 1345 at paragraph 19:

"(a) The lateness by which an amendment is produced is a relative concept ... An amendment is late if it could have been advanced earlier, or involves the duplication of cost and effort, or if it requires the resisting party to revisit any of the significant steps in the litigation (such as

disclosure or the provision of witness statements and expert's reports) which have been completed by the time of the amendment...

(c) The history of the amendment, together with an explanation for its lateness, is a matter for the amending party and is an important factor in the necessary balancing exercise ... In essence, there must be a good reason for the delay ...

(d) The particularity and/or clarity of the proposed amendment then has to be considered, because different considerations may well apply to amendments which are not tightly-drawn or focused.

(e) The prejudice to the resisting parties if the amendments are allowed will incorporate, at one end of the spectrum, the simple fact of being 'mucked around', to the disruption of and additional pressure on their lawyers in the run-up to trial, and the duplication of cost and effort at the other. If allowing the amendments would necessitate the adjournment of the trial, that may be an overwhelming reason to refuse the amendments.

(f) Prejudice to the amending party if the amendments are not allowed will, obviously, include its inability to advance its amended case, but that is just one factor to be considered ... Moreover, if that prejudice has come about by the amending party's own conduct, then it is a much less important element of the balancing exercise ..."

4. Birss LJ therefore made clear that the simple point about lateness is that it calls for an explanation to enable the court to work out whether or not it is a case in which, despite the prejudice caused by the lateness, the balance nevertheless comes down in favour of allowing the amendment. He pointed to a contrast between the simple fact of being mucked around which imposed additional pressure on the lawyers in the run-up to trial, and a duplication of cost and effort.
5. In the present case, it is not said that allowing any of the amendments would necessitate the adjournment of the trial. But Mr Hunter submitted with some force that *ABP Technology* was but one example of a change in culture to the effect that, in the context of a late amendment, the

arguability of the point is no longer given the prominence in the balancing exercise which used to be the case.

6. I consider first the proposed currency amendments, set out in paragraphs 83D to 83I of the draft. I do not need to read them into the transcript, but in broad summary, the first defendant now seeks permission to make a positive case that the claim should not be in US dollars. He seeks to plead that the only loss the bank can have sustained is to be computed in Ukrainian Hryvnia (UAH), because that is the currency in which the bank's loss was felt.
7. The arguments advanced on behalf of the first defendant can be summarised as follows. They are made in circumstances in which the proposed amendments are of real practical significance because the UAH has devalued against the US dollar by some four and a half times between 2010 and the year ended 2022. This rate of decline has been pronounced since the Russian invasion of Ukraine, which itself was the cause of a 12-month adjournment of the trial.
8. Against that background, the first factor on which the first defendant relied is that the amendments are arguable. The starting point for this submission is that the factual basis for the amendments are, or should be, common ground. The first defendant relied on the following facts which he asserts cannot be particularly controversial.
9. He said that a considerable number, some 187 out of 270, of the relevant drawdowns were denominated in UAH, rather than US dollars. Secondly, he said there has been a significant depreciation of the UAH against the US dollar during the relevant period, a point which I have already mentioned. Thirdly he said that the bank's presentation of currency for the purpose of its own financial statements is in UAH, not US dollars. Fourthly, he said that the impairment recognised by the bank in its own accounts, in relation to its own corporate loan portfolio, was recognised in UAH, even where the loans to which the impairment related had been advanced in US dollars.

10. The first defendant also relied on the expert evidence of Mr Davidson, in which he explains the significance of the fact that, because of the devaluation during the time period of the relevant transactions, the tracing and matching of transactions in US dollars, particularly those which took place in UAH in the first place, is greatly affected by exchange rate movements. He said that any loss to the bank based on transactions expressed in US dollars produces a much greater loss figure than the same calculations would, if expressed in the bank's native currency of UAH. He contends that, from an accountant's point of view, re-basing the claim entirely in UAH would be more appropriate given the way that its accounts are prepared. It follows that it was at the heart of the first defendant's case on this application that the bank's own financial statements inform the way in which the bank suffered the loss it now claims. It is the currency which is said best to express the losses in the specific circumstances of this case.
11. The first defendant then went on to submit that there are several reasons, other than the arguability of the claim, why the interests of justice point to the amendment being permitted. He did so against the background of the fact that CPR PD16 paragraph 9.1 requires a claim for a sum of money expressed in a foreign currency to explain why it is made for payment in that currency. He pointed out that this is something that was not done by the bank in the present case. He said that the bank does not explain in its pleading why it has advanced its claim in US dollars as opposed to UAH.
12. Doubtless the principal purpose of paragraph 9.1 is to require a claimant to plead why a foreign currency rather than sterling is advanced as the appropriate currency for the claim. But I think that there is some force in the submission that the policy which underpins paragraph 9.1 is that the obligation of the claimant to explain why the relevant foreign currency is utilised is a freestanding one, quite apart from whether or not that explanation is supplemented by a reference to alternative options. In the present case, it is fairly obvious from the surrounding facts and circumstances that an appropriate comparator to US dollars would be UAH.

13. The next reason given by the first defendant was that the impact of the currency issue on the bank's claim is what Mr Howard in his skeleton argument called 'gargantuan', reducing the value claimed in the claim form from a figure, if it were to be expressed in sterling, of c.£1.429 billion to a figure of c.£521 million. This was said to be a highly significant consideration, more particularly when set against the lack of what was said to be any real prejudice to the bank. In short, Mr Howard submitted that it would be a very strong thing to shut out the first defendant from running this particular case at trial.
14. Next, the first defendant submitted that he had in any event put the bank to proof by express non-admission of the appropriate currency of his claim. For that reason, the first defendant said that there is little real difference between the situation which now pertains on the basis of the existing pleading and the situation as it will stand after any amendment is made if permission were to be granted. It followed from this part of the reasoning that the bank will not suffer any real prejudice because, so the first defendant said, the bank would have had to prove the currency of its claim in any event.
15. The first defendant also submitted that there was no real prejudice to the bank because the underlying evidence on which the amendments depend includes the bank's own financial statements. It also includes the bank's own forensic evidence which identifies the currencies in which the relevant loans and relevant drawdowns were made. There is no further evidence of fact which is required.
16. Mr Howard also said that the bank's complaints about prejudice are overblown more generally. He submitted that all the bank needs to do by way of response to the amendments in the form proposed is to put in a reply explaining why it says that the claim is correctly made in US dollars. There is no need for this to extend to the identification of what the position would be if the loss were properly to be assessable in UAH. He said that any case to that effect would amount to the bank advancing an alternative case which was not properly to be characterised as a response to the first defendant's

amendment, but rather was the pleading of an alternative to its original case to cover off the possibility that it may fail to establish that it had suffered a loss in US dollars.

17. All of these points have substance. What is less clear cut is the first defendant's explanation for the lateness, a factor which Birss LJ referred to as a significant part of the balancing exercise. The closest the bank gets to such an explanation is that it was only when the point was identified in Mr Davidson's third report that the relevance of the currency of the bank's alleged loss was thrown into such sharp focus.
18. Not only is this a weak explanation, it also highlights a surprising state of affairs. The claim is a Ukrainian law claim, and the bank is a Ukrainian bank suing two of its former officers and other connected parties arising out of their conduct as such, while a material amount of the drawdowns giving rise to the losses claimed by the bank were made in UAH. But set against that, there is no evidence from which I can infer that the first defendant adopted a deliberate tactic of keeping the point up his sleeve, so as to spring it upon the bank at the last minute. I say that, even though I do not accept the substance of Mr Howard's submission in reply to the effect that the case was simply treated by his clients as a claim that had been brought in US dollars as a matter of convenience. I do not consider that it was a simple matter of convenience. The evidence is that US dollars was treated by all parties as the appropriate currency. There is no evidence that, until Mr Davidson produced his third report, anybody focused on UAH as being the right currency in which to bring the claim.
19. This does, however, justify the bank's submission that it is proper to infer that the first defendant made a very late and indeed last minute decision to run the currency point in the light of the depreciation of the UAH since the start of the Russian invasion of Ukraine. It also relied on a submission that the first defendant was not as open as he should have been on the instructions which were given to Mr Davidson, and which themselves gave rise to the evidence on which he relies in support of his application.

20. So far as the other arguments by the bank are concerned, the bank did not say that the amendments do not put forward an arguable case, but it submitted that the case is weak. It submitted that this is plainly a US dollar fraud in the sense that two-thirds of the drawdown by value were in US dollars, although it did not submit that depletion of the bank's US dollar reserves was itself pleaded as part of the fraud. It points out that there is no evidence as to how the matter has come to be advanced at this very late stage, apart from the Davidson report, which does not really deal with the point.
21. The bank also submitted that the proposed amendments are not properly particularised. By way of example, it pointed to the proposed new paragraph 83G in which the first defendant made clear that the examples it gives of the facts on which it relies, based on its own financial statements, are just that: they are no more than examples. It was submitted that this was an impermissible attempt to leave open yet further changes to the first defendant's ever-changing pleadings. The bank also said that there are a number of other reasons why the court should not give permission.
22. First of all, it said that the proposed amendments flow from a very late decision by the first defendant. It relied on the fact that, if the case had not been adjourned by reason of the Russian invasion, the original trial would have been concluded by now. This is said to have been aggravated by the fact that the decision could have been made much earlier, and also by the fact that it was so very clear that everyone was proceeding on the basis that this was a US dollar claim. This was apparent from the way in which the first defendant's case was advanced on the papers, including, for example, the Lafferty spreadsheets and the parties' pleadings. It is therefore hard to imagine, the bank said, a more significant and dramatic change.
23. Secondly, the bank submitted that there is no proper explanation for why the applications are made so late. The reality is that the decision that has been made by the first defendant is because and only because of the recent decline in UAH. It submitted that the position on the lateness of the amendment was not improved by the fact that the source of the new case anyway in relation to currency conversion was the expert evidence in respect of which the first defendant had still not

disclosed the instructions given to Mr Davidson. It was said that the source of the information for the proposed amendments does to detract in any way from the force of the bank's submission that it is clear that these are amendments which could and should have been advanced very much earlier.

24. It was also said by the bank that there is real and very substantial prejudice if the amendments are allowed, because responding to them will require significant time and effort. There will be a need for further forensic accounting evidence if the amendments are to be permitted, and this is something which the first defendant accepts as being necessary. There will also be a need for further evidence from the bank to address the question of the currency which best expresses the losses in the specific circumstances of the present case.
25. The upshot of all these concerns is that the amendments have the potential to prejudice the bank, diverting resources and duplicating costs at a time when the bank is heavily engaged in the final preparations for the trial. This is a factor which the bank said should not be underestimated. It goes much further than being just a question of mucking the bank around.
26. Finally, the bank submitted that, if the amendments are not allowed because they have been made so late, the first defendant has only himself to blame for any prejudice he may suffer as a consequence.
27. Turning to the proposed Ukrainian proceedings amendments, they are to be found at paragraphs 87A to 88 of the proposed new pleading. Again, I do not need to read them into the transcript. They were presented by the first defendant as a further particularisation of his case that the bank's allegations in these proceedings to the effect that relevant intermediate and new loans are void or voidable, are inconsistent with its conduct elsewhere in treating these loans as valid.
28. The first defendant submitted that the references to Ukrainian proceedings and to the allegations made by the bank in those proceedings are references to additional facts sought to be pleaded as particulars of an existing pleading of the Ukrainian law principle of *venire contra factum proprium*. This is an averment which has been on the face of the pleadings for some time and which is said to apply in the light of the way that the bank had itself accounted for these loans. It said that this

principle is therefore already the subject of expert evidence on the basis of the existing pleadings, although there is a dispute as to whether detrimental reliance is a necessary part of the averment as a matter of Ukrainian law.

29. Although the Ukrainian proceedings are not themselves yet pleaded, the first defendant said that the underlying facts on which he relies are all known to the bank because they are simply pleas of the bank's conduct in relation to proceedings to which it is or has been a party. The first defendant submitted that the case it wishes to advance might either be through the application of the principles of Ukrainian law addressed in the evidence of Mr Alyoshin, as the *lex causae*, or by application of the principles discussed in *Twinsectra v Lloyds Bank* [2018] EWHC 672 (Ch), which it said may be engaged as a matter of English law as the *lex fori*, even where the legal proceedings in which the inconsistent right or remedy is sought to be exercised are foreign proceedings and are maintained against a different party.
30. The bank accepted that it is familiar with the other Ukrainian proceedings, but submitted that this is no answer to the lateness of the proposed amendments. It said that if they are allowed, its English legal team would have to consider afresh the statements of case and judgments in six separate sets of Ukrainian proceedings with a view to addressing this new issue at trial. It seems to me that this is plainly the case. The bank also repeated many of the same points that it made in relation to the currency amendments and said that they applied with equal force to the proposed amendment relating to the Ukrainian proceedings.
31. The bank also submitted that the pleas are in any event ambiguous and defective on at least two levels. First, it said that everything was pleaded in the most general of terms. It is not possible to identify from the face of the proposed amendments what are said to be the inconsistent acts or words, and that it would be necessary for that reason alone for the bank's legal team to review those proceedings and make an assessment of where any inconsistencies lie.

32. It also criticised those parts of the proposed amendment which contain an averment that, as a matter of English law, the bank cannot approbate or reprobate. Indeed, the bank contended that the proposed amendment does not give rise to a good arguable case, because there is no English law principle preventing a party from taking inconsistent positions in different legal proceedings. In support of that submission, the bank relied on *ED&F Man Sugar Limited v T&L Sugars Limited* [2016] EWHC 272 (Comm), a decision of Leggatt J which was not cited in *Twinsectra*. The way that Leggatt J expressed the point was that the authorities relied on in support of the principle are all examples of a party attempting simultaneously to advance two inconsistent cases in the same legal proceedings. None of them is an example of a claimant being prevented from pursuing mutually inconsistent cases against different parties in different proceedings.
33. The bank also stressed the fact that the stage this case has reached is one in which everything has to be devoted to trial preparation. It is important to assess the additional work required against the background of the fact that the bank has been deluged with late disclosure, a complaint which is plainly made out on the evidence, and that the first defendant has manifested a complete disregard for deadlines in respect of the orders the court has made for expert evidence.
34. Notwithstanding what I regard as powerful submissions made on behalf of the bank, I have reached the conclusion that the balance of justice comes down just, but only just, in favour of allowing the amendments subject to one or two points to which I shall come.
35. To start with, I think that all of the allegations now sought to be made are arguable, although I agree with Mr Hunter that the mere fact that is the case and that the proposed amendments are capable of having a significant effect on the outcome does not of itself justify the relief. However, it is not said that the grant of permission will imperil the trial, and I am not satisfied that the inevitable disruption for the bank will be sufficiently significant to its trial preparation to lead to the conclusion that permission should for that reason be refused.

36. So far as the currency amendments are concerned, I also have in mind the fact that the bank should have explained its case in US dollars from the outset, and the first defendant had always put the bank to proof on the claim being in US dollars, specifically insofar as the cost of money for interest purposes was concerned, but also by reason of its general traverse. Although this consideration should not be overstated, because any positive case by the first defendant on currency should always have been positively pleaded, more particularly as he had gone along with assessing and defending the claim in US dollars for many years without demur, it remains a relevant factor.
37. However, permission will not be granted for the words "in particular but without limitation" in the third line of paragraph 83G of the proposed amendments. The inclusion of those words would be to leave open an unacceptable degree of uncertainty as to the facts relied on. The first defendant is now in the last chance saloon, so far as pleading his defence is concerned. It will have been amended seven times and, although a fair few of those amendments were responsive to amendments made by the bank, he must understand that he will have a high hurdle to overcome if he is to persuade the court that any further amendments or particularisation is to be allowed.
38. The bank submitted that, if the court is otherwise minded to grant permission, it should impose conditions, the most significant of which is payment of a sum of money into court, in exercise of the court's powers under CPR 3.1(3). This is important, so it is submitted, both to mitigate the prejudice and to mark the court's disapproval of the first defendant's conduct. Such conditionality is said to be justified in relation to both of the opposed groups of amendments.
39. In deciding whether I should impose conditions, I agree that the test is whether such conditions would be a proportionate and effective means of exercising control over the future conduct of the litigation, in circumstances in which the first defendant can be seen to have demonstrated a lack of willingness to litigate a genuine defence as economically and expeditiously as possible in accordance with the overriding objective.

40. In support of its argument that this needs to be brought home to the first defendant, the bank relied in part on the first defendant's prior conduct of these proceedings. In particular, it pointed to an abuse by the first defendant of the expert evidence process in which he sat back and allowed the bank to address his case on the Lafferty spreadsheets before abandoning the case altogether. This abandonment was based on Mr Davidson's first report and to some extent is redolent of what has happened with the currency claim – another example of a new case of material significance to value which should have been advanced earlier if it was to be advanced at all.
41. The bank also relied on the number of occasions on which the court has reached the conclusion that the first defendant's approach to disclosure has been deficient. It said that these are reflective of an attitude to litigation in which the first defendant was prepared to flout court orders and not litigate in an expeditious and reasonable manner.
42. In broad terms, I am satisfied that there have been occasions on which this characterisation of the first defendant's conduct is accurate. There has been much about his approach to disclosure which the bank would be justified in describing as akin to squeezing blood out of a stone and is far removed from compliance with the first defendant's obligations to co-operate with the court in furthering the overriding objective.
43. I also agree that this conduct means that the court should adopt in a proportionate manner an approach to the question of whether or not to impose conditions for the grant of any permission to amend which lays down a clear marker that the first defendant must observe the rules as to how litigation ought to be conducted.
44. The bank submitted that, if I were to reach that conclusion, the appropriate condition would be the payment into court of a sum to reflect the time wasted on preparation of the Lafferty spreadsheets, the time spent addressing Mr Davidson's approach to the repayments and use of funds defences, which do not now work as a matter of Ukrainian law, and the costs which will be incurred in

responding to the amendments and indeed more generally in relation to the bank's claim going forward in the light of the amendments.

45. I do not agree that a condition based on the earlier conduct is, of itself, an appropriate response to a late application for permission to amend, anyway in the sense that costs incurred as a result of that conduct should, even if established, be the measure of a condition imposed when permitting the amendment. However, I do agree that conditions which have a direct and principled connection to the indulgence which the first defendant now seeks in applying for permission to amend his defence are appropriate in any event.
46. It is appropriate in any event for the court to make the normal order made on a successful application for permission to amend: that that the first defendant pay the costs of and caused by the amendments. But I also think that a strengthening of this order is appropriate in the present case. That strengthening should be by way of a payment into court as a condition of allowing the amendment. This will be ordered, even though the first defendant is subject to a worldwide freezing order which, in my judgment, is not of itself an answer to the point.
47. The next question which arises is as to the appropriate amount. In a letter from Hogan Lovells of 24 March 2023, the bank identified the broad heads of cost it anticipated incurring in considering and dealing with the consequences of the proposed amendments. They are very substantial and amount to a total of some £719,000. Much the most substantial of these costs related to the currency amendments. The bank made clear in the course of Mr Hunter's submissions that one of the reasons for the expense is that its expert, Mr Thompson, will have to go through his evidence and change the currency when assessing the value of the repayments and assets which come back in order to repay the original drawdowns. This would be a time-consuming exercise.
48. Mr Howard submitted that those costs were not costs of and occasioned by the amendments, because in reality they were the costs of the bank coming up with an alternative case on currency which he said was opportunistic. He said that the effect of the amendment being allowed is that it

becomes open to the first defendant to make a positive case that the bank's claim against the first defendant in US dollars should or could only be advanced in UAH. The only costs which could properly be treated as occasioned by that amendment were the costs of the bank's reply to the effect that, for identifiable reasons, the first defendant was wrong to say that the claim could only be advanced in UAH. He submitted that, if the bank pleads not just that the first defendant is wrong to say that its claim is in UAH but also goes on to say that if the first defendant is correct, a claim in UAH must be approached in a different manner, that will be a new claim made by the bank which is not occasioned by the amendment. Rather, it is the bank pleading an alternative case in UAH in order to hedge its bets that it might be wrong about its claim being in US dollars.

49. On one level, I see the force of that submission. That is more particularly the case in circumstances in which, as Mr Howard submitted, the bank did not explain at the outset why it sued for a loss in US dollars, notwithstanding its obligation to do so under CPR PD16 paragraph 9.1. Furthermore, it must in any event establish that it suffered a US dollars loss, which it would not have done, or so Mr Howard submitted, if he was right to say that the only loss the bank suffered was in UAH.
50. However, I do not consider that this is necessarily an answer to the condition which the bank seeks to impose. Where the court is satisfied, as I am, that the bank is carrying out significant additional work that it would not otherwise have carried out if permission to amend had not been granted, I think that, in the particular circumstances of this case, it is an appropriate response to the indulgence sought by the first defendant, to require him to make a payment into court which represents a reasonable assessment of the likely cost of that work.
51. This is not just because it might properly be regarded as a cost of and caused by the amendment for which the bank is entitled to obtain an order in any event, but because there is a reasonable prospect that in due course, the court might make an order which reflects the broad consequences for the bank of the circumstances in which permission for the amendments came to be sought and granted, including the fact that they were sought very late indeed. In my judgment it is very likely that this

will have a significant impact on increasing the costs which the bank will incur, given the existing pressures on its legal team at this stage in its preparations for the trial.

52. In my view, Mr Howard's submissions concentrated too narrowly on any payment into court, which he resisted in any event at whatever figure, being limited to a simple reflection of an amount that the court might assess in due course as the costs of and caused by the amendment. CPR 3.1(3) is not so circumscribed. But in any event, I am satisfied that the costs to the bank of the way in which this part of the first defendant's case on the two issues has come to be advanced, together with the additional steps which the bank now considers it appropriate to take in light of the first defendant's new case, which it would not otherwise have taken, are both principled bases for quantifying a payment in.
53. Of course an estimate of the right figure is not a scientific exercise, but doing the best I can in all the circumstances, in the light of the correspondence that has been had between the parties on this point, I think that the right figure is £600,000. The consequence of this is that the order will take the form reflected in paragraphs 14 to 19 of the bank's draft order, not paragraphs 9 to 13, but subject to the following.
54. Permission is not granted for the words I indicated in the third line of paragraph 83G. The figure to be inserted into paragraph 17B will be £600,000. As to the remaining conditions, I did not understand that Mr Howard resisted a condition that the instructions given to Mr Davidson should be provided, which is the condition referred to in 17A. That should be done as soon as practicable, but I will hear counsel on the precise date to be included.
55. Secondly, I do not consider that it is appropriate to make what essentially amounts to an unless order in the form of 17C. This is not least because, as Mr Davidson will be well aware, his duty to the court overrides any duty to the person by whom he is engaged, and he will know from this judgment that the court places very great importance on the directions being complied with at this stage of the trial preparation process. However, the fact that I do not think that what amounts to an unless order

in the form of 17C, which in substance only affects him, is appropriate should not be construed as a signal that the court is not concerned about timetabling at this stage. It is.

56. So for those reasons, I will grant permission to amend in the form I have indicated in the course of this judgment and I hope that the form of order can be agreed between counsel.