

Neutral Citation Number: [2024] EWHC 1108 (Ch)

Case No: FL-2020-000038, FL-2021-000011,
FL-2022-000009, FL-2022-000023

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
CHANCERY DIVISION
FINANCIAL LIST

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

Date: 19 April 2024

Before :

Mr Justice Michael Green

Between :

Persons Identified in Schedule 1

- and -

Standard Chartered PLC

Claimant

Defendant

Adrian Beltrami KC and Dominic Kennelly (instructed by **Herbert Smith Freehills LLP**)
for the **Claimant**

Graham Chapman KC, Shail Patel and William Harman (instructed by **Signature
Litigation LLP**) for the **Defendant**

Hearing dates: **16th and 17th April 2024**

JUDGMENT

Mr Justice Michael Green
(15:31 pm)

Friday, 19 April 2024

Judgment by **MR JUSTICE MICHAEL GREEN**

Introduction

1. On Tuesday 16 and Wednesday 17 April this week, I heard the second CMC in this matter. I am the assigned judge, and heard the first CMC last October 2023 when I decided various issues concerning whether certain claims should be struck out and whether further particulars should be provided by the Claimants. However, I did not decide a major issue then concerning the shape of these proceedings, more specifically, whether there should be a split trial, and, if so, on what basis.
2. That is the principal issue that I am dealing with in this judgment, which I am giving orally so that the parties know as soon as possible what my decision is.
3. There are also some other applications that I heard at the CMC that I will also deal with, and some of these are partially interrelated with the main issue.
4. I will not repeat the factual background of the case which I set out in paragraphs 9 to 38 of my judgment following the last CMC (reported at [2023] EWHC 2756 (Ch)), and which is very familiar to the parties. I will adopt the same definitions and abbreviations as in that judgment.
5. There are 226 Claimants who are said to be representing some 1,600 underlying funds and who invested in SC plc at the material time and are said to have suffered losses as a result of its untrue or misleading statements and omissions in various prospectuses and published information. This concerns breaches of US sanctions against Iran, some of which have been admitted to by SC plc in two settlement agreements with the US authorities and, further, there are allegations of widespread bribery in a Singaporean company, Maxpower Group PTE, which was owned 47% by the Group and the Claimants say that it was substantially controlled by the Group.

6. The Claimants bring their claims pursuant to sections 90 and 90A and schedule 10A to the Financial Services and Markets Act 2000. Those claims are estimated at this stage to be in the region of £1.45 billion. That is a very substantial claim, and I have to decide how best it should be tried by reference to balancing various considerations, in particular fairness and pragmatism, also bearing in mind the impact on the court's resources and the best use of them in the circumstances.
7. As I think both parties accepted, there is no right answer to this, and although there have been some other cases where a particular course seems to have been established for these sorts of cases, the circumstances of this case, and perhaps most importantly its size, have to be firmly taken into account, together with the overriding objective.
8. Following the first CMC, the trial has been listed to begin in January 2026, with a provisional time estimate of 96 days, including eight days of judicial prereading.
9. In the middle of last week, for the first time, SC plc's solicitors, Herbert Smith Freehills LLP (“HSF”), suggested the trial date should be put back by a year to January 2027 on the basis that they would not be able to complete their disclosure in time for a start in 2026. I will deal with this application later.
10. As before, Mr Graham Chapman KC, together with Mr Shail Patel KC and Mr William Harman appear on behalf of the Claimants, instructed now by Signature Litigation LLP (“Signature”). They have replaced the Claimants' previous solicitors only on 4 March 2024. They are inevitably attempting to get up to speed with all the matters that need dealing with. Mr Adrian Beltrami KC, leading Mr Dominic Kennelly, appear on behalf of SC plc, the Defendant. I am grateful to counsel and their legal teams for the submissions that have been made, both orally and in writing.

Procedural Chronology

11. A short procedural chronology is as follows.
12. The first claim form was issued in October 2020, some three and a half years ago now. In my judgment following the first CMC, I said I was concerned and disappointed at the extremely slow pace of the proceedings and the failure of the Claimants to get their "house in order", and to have provided by that stage proper particulars as to standing, reliance and quantum. I decided, however, to go with what the Claimants had agreed to provide by way of further particulars of standing, reliance and quantum, and I set out a timetable for those particulars to be provided that was in line with what the Claimants had suggested, and, therefore, with what they were suggesting was feasible.
13. Having sided with the Claimants, in the sense that SC plc wanted more detailed particulars on reliance and for earlier provision of those particulars, it is disappointing again to see that there has not been compliance by the Claimants with that order that was thought to be somewhat generous to them. Their failures in this regard are regrettable, which Mr Chapman accepted, while explaining that they had taken heed of my comments about slow progress on the last occasion and had been working hard to try to comply with the order. But it has meant that we are unfortunately not now, at this second CMC, in the position that we should have been, and that means that important decisions are being made on incomplete information.
14. As I have already indicated, and in addition to the directions I have just referred to, I dismissed SC plc's application to strike out and/or for summary judgment in respect of the wider allegations of breach of US sanctions that are made outside of the settlement agreements. I also dismissed the similar application in respect of the plea of knowledge in relation to the PDMRs in relation to the bribery scheme. I did, however, strike out the Claimants' plea that four directors of Maxpower were PDMRs of SC plc. SC plc subsequently agreed to pay 75% of the cost of the strike-out application to be assessed if not agreed. SC plc has applied for permission to appeal,

- which I refused, but it was granted by Lady Justice Asplin on 29 February 2024, and that has been expedited to come on for hearing over one and a half days, commencing on 8 May 2024.
15. As to the orders for the further particulars that I have referred to, there remains unresolved the costs incidence of that application, and I will deal with this later in this judgment.
 16. On 15 December 2023, the Claimants served their further particulars of standing. However, SC plc maintained this did not comply with my order and they made an application to Mr Justice Leech who was hearing the disclosure guidance hearings, (“DGHs”). On 28 March 2024, Mr Justice Leech ordered the Claimants to provide an amended version of the particulars of standing, as he found that what had been served did not comply with my order. As part of that, he also ordered that the Claimants must provide "clean trading data", as he considered that what had been provided involved assumptions by the Claimants' experts as to quantum, and that this was insufficient to comply with my order.
 17. Mr Chapman said that the Claimants would be seeking to appeal this aspect of Mr Justice Leech's order. For today's purposes, it means that particulars of standing remain incomplete, although one of the few matters to be agreed is that standing will be tried at the first trial with the Defendant's side common issues.
 18. As to reliance, the Claimants were obliged by my order to serve questionnaire responses by 31 January 2024. On that date, the Claimants served responses from 113 Claimants relating to 482 funds. This constitutes only about 30% of the Claimants' funds and only about 37% of the total claim value. Three and a half years after the claim was begun, the Defendant only has the generic pleaded claims of reliance in relation to the majority of the funds. The Claimants applied for an extension of time to 29 March 2024 but were unable to comply with even that extended date. They therefore issued an amended extension of time application for all remaining questionnaire responses to be served by 31 May 2024. SC plc is of course unhappy about this, but it has consented to that time extension but on the basis that it is on an unless

basis, such that those Claimants, or the relevant funds, should not be allowed to bring their claim if they do not provide responses by 31 May 2024. I will deal with that unless order suggestion later.

19. But to bring things up-to-date, Mr Chapman informed me that on the night before the first day of this hearing, that is Monday night, a further batch of questionnaire responses were served, bringing the total to 915 funds. There are still therefore approximately 700 outstanding responses from the funds, and SC plc is concerned about the apparent lack of engagement from some of the Claimants.
20. As to particulars of quantum, I had ordered this to be provided by 29 February 2024. On 8 March, which SC plc agreed to as an extension of time, some such particulars were served, however this was incomplete. There are 14 Claimants who had not provided any particulars of quantum for any of their funds and these have been called the “no loss Claimants”. There were a further 83 Claimants who had provided some particulars but not for all of their funds. The Claimants have not applied for any extension of time in this respect.
21. Instead, on 11 April 2024, that is last Thursday, SC plc issued an application seeking an order that those particulars be provided by 23 May 2024, and they want that order on an unless basis as regards the no loss Claimants. Mr Chapman complained that the application was issued too late to be dealt with at the CMC and it was not listed to be heard at it. He also said that on the Monday night, five of the 14 no loss Claimants had served their quantum particulars. As it turned out, the Claimants put together a witness statement on the second day of the hearing, that is Wednesday, and Mr Chapman referred to this, but neither I nor Mr Beltrami had any opportunity to read it. I will deal with this later, but I can say at this stage that Mr Beltrami fairly accepted that, in the light of what Mr Chapman had said about what that witness statement contained, he would not be pursuing the unless order at this stage. He still, however, wishes me to make an order with a fixed date for the provision of that information.

Split Trial

22. So with that background, I turn to consider the main issue of split trial, or, more accurately, what should be the issues to be decided at the first trial (“T1”), it being agreed that in any event quantum will not be decided at that trial and would be left to a second trial (“T2”), if necessary. So there will be a split trial and it is just a question of where the split should fall.
23. The issues of trial length, timetable and the start date for the trial are interdependent issues which also go into the mix in deciding the most appropriate and fair way to go about this large-scale litigation, and there are a number of factors for me to take into account in order to get the right or the most suitable balance. This sort of active case management I consider to be essential for these sorts of claims, and I held in *Wirral Council v Indivior PLC* [2023] EWHC 3114 (Comm), that the representative action in that case would deprive the court of effecting that sort of active case management. As Mr Chapman said, the overriding objective requires active case management to take into account the interests of the Claimants, the Defendant and other court users and the court's resources, and this requires “give and take” from all concerned.
24. On behalf of the Claimants, Mr Chapman proposed that T1 should deal with standing and the common issues relating to SC plc's conduct, which he called the “common issues”. These are: the extent of the wrongdoing, (Issues 1 and 2, and 29 to 33 in the agreed list of issues); the alleged untrue or misleading statements, omissions and delay, (Issues 4 to 8 and 12); PDMR knowledge, (Issues 9 to 11); and the section 90 defences, (Issue 37). He described these issues as the "must haves." There is no dispute that these issues will be tried at T1.
25. He described the issues that would be left to T2 as the "nice to haves". I do not find these particularly helpful classifications as the Claimants' side issues that he wishes to defer to T2 are "must haves", so far as the Claimants are concerned, if they wish to succeed in their claim. Those issues are: reliance, both common and individual, (Issues 13 to 24 and 34 to 35); limitation, (Issues 27 and 38); and causation and quantum, (Issues 25 to 26 and 36).

26. It is common ground that reliance, limitation and causation will have to be tried by way of representative samples of Claimants covering all those issues. If there is to be a split, there is an issue as to when such sampling should take place, that is whether it should be before or after T1.
27. Mr Beltrami on behalf of SC plc had a primary position of including reliance, limitation and causation in T1 with only quantum left for T2. But he also had an alternative position, which is that the Claimants' common reliance claims should be heard at T1. He is also advocating that if there is a split, in the way that the Claimants suggest, or in accordance with his alternative suggestion, that the sampling process on those Claimants' side issues should take place before T1 and that those sample Claimants should give disclosure and witness statements in advance of T1. That will be consistent with what has happened in other securities fraud actions, which I will come on to consider.
28. Mr Chapman's proposal for a split has been adopted in those other cases.
- (1) In *Various Claimants v RSA*, (unreported decision dated 28 February 2022) (“*RSA*”), Mr Justice Miles revisited his earlier order that reliance be included in the first trial and decided to defer reliance to a second trial because the reliance issues had changed since his first decision and had "become a great deal more elaborate and complex, both factually and legally". In that case, the Claimants had raised similar common reliance claims as in this case, and it was those that were said to have made the case that much more complex.
 - (2) In *Various Claimants v G4S Ltd* [2022] EWHC 1742 (Ch), (“*G4S*”), Mrs Justice Falk, as she then was, held that a "split along the lines of that now adopted in *RSA* case currently appears to be the best pragmatic solution". She did, however, go on to direct, as Mr Beltrami urges me to do in this case, that there be sampling, disclosure and witness evidence on reliance before T1.

(3) Similarly, in *Various Claimants v Serco Group plc* [2022] EWHC 2052, (“*Serco*”), and perhaps unsurprisingly, as it was the same judge, Mrs Justice Falk, the same format and directions were adopted without dispute.

29. Mr Chapman accepted that these cases are not *sui generis* and do not need to be approached in the same way, but he did say that both *RSA* and *G4S* settled shortly before their first trial and that may be an indication of the effectiveness of adopting those sorts of case management directions in these cases. Having said that, there have been no section 90A claims to go to trial yet, so we do not yet know whether such a split will work well in practice.
30. Mr Beltrami submitted that these cases have no precedential value and are, in any event, on a quite different scale to this case. He pointed out that in *RSA*, the defendant's side issues to be tried at the first trial were going to be much shorter, the claimant saying they would only take 12 days, although the judge thought it would be a bit longer. It was anticipated that the second trial in that case would be longer, so the benefits of avoiding a second trial would be that much greater. And in *G4S*, the first trial was estimated to last some six weeks or 24 days.
31. In this case, Mr Beltrami said that the balance is the other way, with a very long trial anticipated just on the Defendant's side issues and a much shorter trial on the Claimants' side issues being tried through sampling. He showed me the Claimants' case management information sheet, (“CMIS”), dated 10 April 2024, so only last week, where the Claimants referred to the provisional time estimate established at the first CMC of 96 days for a trial on all issues except quantum. They then continued in the CMIS to say: "The Claimants also consider that the time estimate could be reduced to 76 days if reliance and limitation are excluded from that trial." In other words, there appeared to be a 20-day saving by the Claimants' proposal for a split trial.
32. Mr Beltrami said that based on those estimates, there is a completely different dynamic to the proposals in *RSA* and *G4S*, because the potential saving by avoiding T2 is minimal, and it would

therefore be beneficial to all to resolve everything in one go if it only means an extra 20 days on what would be a 76-day trial.

33. In his reply submissions, Mr Chapman challenged those figures and estimates as well as the conclusions drawn from them by Mr Beltrami. They were, of course, the Claimants' own figures, but he said that one needs to understand how they were arrived at. He said that 76 days included a very conservative estimate in relation to standing issues that they would take some 20 days to resolve. The standing issues are very likely to narrow between now and the trial, and, if there are any such live issues, it would be likely that they would take very much less time. Similarly, he said that the estimate for the Defendant's side issues of liability would be likely to be less than estimated, particularly as the Defendant had indicated provisionally that it intends to call only ten witnesses.
34. Conversely, he said that there was not built into the estimate only 20 days for the reliance and limitation issues to be tried on a sample basis. The Claimants' then solicitor, Mr Shrimpton, with some experience in these matters, had said in his witness statement for the first CMC that with 20 sample funds, he estimated that reliance and limitation issues would take up to 36 days of court time. So it was not as simple, Mr Chapman said, as using the 96 and 76 day figures in the CMIS, as those figures were based on the way we had collectively arrived at the conclusion at the first CMC that the case should be provisionally listed for 96 days. This was a pragmatic basis to get something listed, but if one analyses it realistically, the Claimants' T1 is likely to be very much less than the 76 days stated, and T2, if necessary, would be likely longer than the 20 days. (I leave aside quantum, as that would be going anyway to T2.)
35. I can understand why Mr Beltrami thought that the Claimants were saying there would be only a 20-day saving from their CMIS, but it does seem to me that 20 days for standing and even 56 days for Defendant's-side issues are overestimates. T1, as envisaged by the Claimants, is likely to be shorter than the 76 days suggested. As to the length of the reliance and limitation issues, I

am not sure I accept Mr Shrimpton's estimate and think it likely to be closer to 20 days than 36. But what this means is it does bring this case a little closer to the situation faced in *RSA* and *G4S* in terms of the balance between, and overall saving from, having a split trial. Having said that, there are a lot more Claimants in this case and many more pieces of published information that are relied upon.

36. So that brings me to the reasons that Mr Chapman put forward for the split trial.
37. First of all, he said, as is obvious, that the need to deal with reliance and limitation would fall away completely if the claims were dismissed after T1, or the parties reached a settlement before or after T1. He said that the prospects of settlement after T1 are increased, not least because some of the causes of action do not even require proof of reliance. Mr Beltrami said that the Claimants' proposal leaves so much outstanding that there is no guarantee of the matter settling after T1 is decided.
38. Second, Mr Chapman submitted that even if the case did not settle after T1, the likely cost of trying the reliance and limitation issues would be much reduced and more effective as the parties will be focused on the results of T1 and those statements or omissions that will have been found to be actionable. The sampling process and the evidence, including expert evidence, could therefore be tailored to the findings that were made at T1.
39. Mr Beltrami questioned whether that would actually happen in reality, because even though there are some 293 statements identified in the claim, they all form a similar generic pattern, and it is unlikely that each would have to be scrutinised individually. The benefits of streamlining may therefore be minimal. He also said that because of the generic nature of the claim, any sampling that took place prior to T1 would be likely to be just as effective as after T1.
40. Mr Chapman's third point was as to the burden on the parties and the court. I see this as an important factor. There are some suggestions in *RSA* and *G4S* that a trial of all the issues would be unmanageable. I do not think that this would be so. I agree with Mrs Justice Falk, however,

in *G4S*, that such a trial could become "extremely cumbersome". We are encouraged to find ways of trying cases that do not impose an intolerable burden on the judge and are likely to enable a judgment to be produced in a reasonable timeframe. I believe that that would be important to the parties and is a more efficient use of judicial time and the court's resources.

41. Mr Chapman said that there would be a huge burden on the parties if there was a trial on reliance and limitation issues in 2026, even on a sampling basis. He said that the sample selection process is complex and would require further rounds of questionnaires to narrow down the possible sample Claimants so that the parties can put forward their proposed sample Claimants, and then for those that have been selected to have to give disclosure and witness statements. The Claimants' evidence suggests that this process will be complex, time consuming and therefore very expensive.

42. I think that exaggerates the difficulties and burden and quite frankly has been partially caused by the Claimants not making progress on those fronts for some years and not complying with the orders I made, which were to try to ensure the parties would be able to complete a sampling process well before T1. The Claimants have chosen to bring these claims, and they therefore need to be sufficiently engaged with them to provide their evidence that is required to support and ultimately to prove their claims. I do bear in mind that this is hard-fought litigation in which every single point is likely to be taken and disputed. The Claimants have been complaining about the oppressive nature of the approach adopted by SC plc with no expense spared to this litigation, and with their costs estimated to September 2024 to be some £17.8 million. However, it can fairly be said that this was the Claimants' choice to bring the claim and they could not have expected SC plc simply to throw the towel in on such a large claim.

43. Mr Chapman said that standing is proving to be a very substantial issue and the Defendant has not to date accepted any of the Claimants' standing to bring this claim. I have already referred to Mr Justice Leech's order requiring further particulars and the clean trading data. There is an

ongoing dialogue between the parties as to these matters, but I note that in *Serco*, standing has now been removed from the first trial as it was becoming so burdensome.

44. Disclosure on the common issues will be huge. The Defendant is now saying that it cannot complete disclosure in accordance with the existing directions, and that in itself indicates the scale of the task. As Mr Chapman emphasised, the burden will be very much on the Claimants, once disclosure has been given, to assimilate all that material and to prepare for trial. I do not think it lies well in the mouth of the Defendant to say that this is such a huge task that they need to postpone the trial by a year and then also to say that the Claimants are not under so much of a burden that they can accommodate all the other issues as well at T1. This material will be new to the Claimants and they will not be able to take instructions from their clients in relation to it, unlike the Defendant. I think it almost inevitable that when disclosure is given, and that will be in tranches, there will be disputes and applications that will only add to the burden on the parties and the court.
45. Everyone has agreed that there will need to be amendments to the Claimants' statements of case following disclosure. In particular, there will need to be focus on the allegations of PDMRs' knowledge which will require to be fully particularised so that the Defendant knows the case it has to meet. There will then need to be witness statements, and the bulk of the cross-examination will obviously be on the Claimants' side.
46. Mr Chapman's fifth point concerned the possibility of appeals. He suggested, based on what Mrs Justice Falk said at paragraph 61 in *G4S*, that the risk of separate appeals from separate trials was reduced by the Claimants' proposal, because T1 will be very fact-heavy and so difficult to appeal. While there can be a much reduced risk of bifurcated appeals if everything is tried at the same time, Mr Beltrami accepted that his alternative proposal of trying the common reliance claims in T1 does create an increased risk of appeal, because there are likely to be

important points of principle not decided before in England on those claims and which could be of great significance to the financial markets.

47. It seems to me that the possibility of appeals delaying and disrupting the final resolution of this case is in an ever-present factor that needs to be taken account of but that it is not really decisive one way or the other.
48. Mr Chapman's sixth point was, contrary to what may have been indicated in the other cases, particularly *RSA*, that there is no principle of equalising the litigation burden on the parties. Mr Chapman said that such a principle would be contrary to the underlying foundation of cases such as *Lloyd v Google LLC* [2021] UKSC 50, a Supreme Court decision, and *Commission Recovery Ltd v Marks & Clerk LLP* [2024] EWCA Civ 9, both of which I considered in the *Wirral* case.
49. To my mind, this rather misses the point. The reason for a split trial or not is not to increase the burden on one side or the other. I The reason would be whether, in accordance with the overriding objective, that is the fairest and most efficient way to manage the case. It is important the parties know what the other side's case is, and as to all its constituent elements, including quantum, so that decisions, including in relation to settlement, can be based on the fullest information. It is in the interests of the parties, the court and justice itself to encourage and facilitate settlement to avoid costly and time consuming trials.
50. Mr Beltrami said it is in any event not disproportionate to ask the Claimants to put forward some sample Claimants to establish their case. Mr Beltrami said that his proposal is for a carefully managed and restricted T1 based on sample Claimants, and that this could be accommodated within the 96 days listing. It will therefore require only a modest increase in the costs and timescale for the trial over the Claimants' proposal, whereas the Claimants' proposal involves two separate trials with substantial delay, probably until well into 2029, and increased costs overall. However, there is the possibility of avoiding dealing with those issues at all if the

Defendant is successful on T1, but Mr Beltrami said that the converse is that if the Claimants succeed, there will almost certainly be a T2.

51. Secondly, he said if there is a trial and judgment on all the issues, there is a very good chance that a settlement would follow, because there will have been a decision on all contested issues except quantum.
52. Thirdly, he said that it would mean a fairer distribution of the litigation burden. It is unfair that there should be sole focus on the Defendant and the Claimants avoid all scrutiny of their case at T1. However, there will be some scrutiny as standing is in T1 anyway. But the point about litigation burden can be addressed, it seems to me, by SC plc's alternative proposals to which I now turn.
53. First, Mr Beltrami argued that if I was against him on a full T1, including of reliance and limitation, there should at least be the common reliance claims, excluding the effect on price, that should be tried at T1.
54. The common reliance claims are pleaded in paragraphs 80 to 85 of the re-amended particulars of claim and are advanced by all Claimants. The core allegation is at paragraph 82 and it is as follows:
- "Acquiring or continuing to hold SC shares at a price which was rendered false and artificial by the untrue or misleading statements or material omissions is sufficient to satisfy paragraph 3(4) of schedule 10A FSMA. Proof of this does not require any evidence to be adduced as to reliance, other than evidence establishing that a claimant acquired or continued to hold SC shares at a price artificially inflated by untrue and misleading statements and material omissions."
55. This is what is called the efficient market hypothesis and it is principally a question of law, namely whether, on the proper construction of paragraph 3(4) of schedule 10A to FSMA, a person who purchased SC plc shares at the allegedly inflated market price can, for that reason

and without more, be said to have relied on SC plc's published information, in particular without having to prove that they read the published information or had any awareness of its content. On the face of it, this form of reliance does not require any evidence of reliance, except for some evidence that a Claimant acquired or continued to hold shares at a price that was inflated by the alleged misstatements and omissions.

56. Mr Beltrami, however, directed me to paragraphs 83.4 and 84.2 and 84.3 of the re-amended particulars of claim, which introduce a form of individual reliance, based on assumptions as to what the market price was based on and the fact of SC plc's listing on the London Stock Exchange.
57. Mr Chapman accepted that all the Claimants relied on the effective market hypothesis and that some may have individually also indirectly relied on those other matters. On any view, however, there will need to be only limited factual evidence on these matters.
58. As to expert evidence, the Claimants have indicated that they will seek permission to rely on expert evidence in the following disciplines which are potentially relevant to reliance: (i) equities analysis; (ii) market efficiency; and (iii) equity fund management/index based funds. (i) and (ii) are potentially relevant to the common reliance claims, and Mr Beltrami said that this can be avoided in T1 by making assumptions that the market in SC plc's shares was efficient and that the misstatements and omissions, if any, did inflate SC plc's share price. But in any event, limited expert evidence, if required, could be accommodated at T1.
59. Mr Beltrami submitted that this issue could easily be accommodated and the benefits of doing so were potentially huge. All the Claimants are relying on common reliance, and it appears there may be a significant number who only rely on it and not on any individual reliance case. Therefore, if SC plc succeed in establishing that common reliance does not work as a matter of law, it could knock out a lot of Claimants after T1, even if they succeeded in establishing the Defendant's liability for misstatements and omissions.

60. Responding to SC plc's alternative suggestion, Mr Chapman said that the common reliance issues would require a somewhat complex fact-finding exercise and there would need to be expert evidence. That expert evidence may overlap with some of the expert evidence to be given in support of the individual reliance claims, in particular in the field of equities analysis.
61. Mr Chapman said that an important point is that both common and individual reliance will be tried by sample, and there is a risk that the smaller sample at T1 for the common reliance claims would conflict with the larger sample of Claimants giving evidence at T2 on individual reliance claims and some may in fact give evidence twice.
62. The further point, which was accepted by Mr Beltrami, and which I have already referred to, is the risk of an appeal on the significant legal point that would need to be decided in this respect.
63. Mr Beltrami was also advocating that , even if T1 is not dealing with reliance, or not all reliance issues and limitation, then in accordance with the schemes devised in *RSA*, *G4S* and *Serco*, the Claimants should be required to proceed with their cases in such respect now and in parallel with their preparation for T1, so there would be sampling and disclosure and witness statements from those sample Claimants before T1.
64. Mr Beltrami adopted Mrs Justice Falk's reasoning in *G4S*, saying:
- (1) settlement is best facilitated when the parties know the case they are facing;
 - (2) there needs to be proper engagement by the Claimants with the litigation process;
 - (3) there needs to be an appropriate balance and fairness of the litigation burden between the parties.
 - (4) there is time for the Claimants to progress this essential part of their cases, bearing in mind that the Claimants' real burden for preparing for trial will come after SC plc has given disclosure;
 - (5) importantly, it seems to me, is for witnesses to prepare witness statements as soon as possible, both because of fading memories, and also to avoid those witnesses being over-

influenced by the judgment in T1 where the court will necessarily have decided that some, at least, of the statements were misleading;

(6) it avoids the need for a standing start on completion of T1.

65. Mr Chapman responded to this by saying that it would undermine the order for a split trial because that would be based on the fact that the parties should not be burdened with those issues at T1, and if the Claimants are required to establish the sample Claimants, and provide disclosure and witness statements, the issue may as well be tried. He also said that one of the benefits of a split trial is that the parties will be in a much better position after T1 to identify sample Claimants in the light of the findings made at T1. He also repeated the point that this was a very different case to *RSA*, *G4S* and *Serco* in terms of scale, and he referred to Mr Justice Leech's recent decision in *Various Claimants v Barclays Bank plc* [2024] EWHC 235 (Ch), where he distinguished those cases on the basis that the "Claimant Universe", as he called it, was bigger.
66. That is what the parties had to say on split trial and work to be done in the meantime and I can state my conclusions shortly. As is well recognised, there is no perfect or necessarily right solution to the way these proceedings should be case managed. There is a balance to be struck in ensuring that there is fairness to the parties and that there is the most efficient and pragmatic use of the court's resources to deal with this large and complex claim.
67. I bear in mind that, attractively as Mr Chapman and Mr Beltrami put their submissions, there is a certain amount of tactical posturing going on on both sides, with the outcome they are each pushing for being made to fit with the reasons being put forward. There is quite an element of feel in these sorts of decisions, and the suggestions in particular that a certain direction would give rise to an intolerable burden on one side or the other has to be judged by reference to the fact that this is a claim brought by the Claimants with the benefit of litigation funding and who would therefore wish to avoid spending too much time and money on Claimants' side issues,

preferring to put the pressure on the Defendant, but also on the Defendant's side seemingly willing to throw vast resources at the case, taking every possible point and appeal, but yet coming to this CMC with the suggestion that, despite that, it needs considerably more time for disclosure. There has, as Mr Chapman submitted, to be some give and take on both sides.

68. For my part, I have to adopt a realistic and pragmatic approach. What I have decided is that the best course in the circumstances at this stage is for there to be a split trial, so T1 will be only standing, Defendant's-side common issues, but also the common reliance issues suggested by the Defendant. T2 will be for all other reliance issues, together with limitation, causation and quantum.
69. I will also direct, in accordance with *RSA*, *G4S* and *Serco*, for the individual reliance claims and limitation issues to be progressed. This is not set in stone and can be reviewed at later CMCs if there is a considerable change in circumstances, but for now it seems to me that this is the fairest way forward for the following reasons.
70. First, I think that a 76-day trial is, in itself, a considerable burden on the court, *a fortiori* a 96-day trial. It is important that the trial itself is manageable, and that the judge is able to deal with the issues before him or her in an efficient and timely way.
71. Second, I do think that there is a more than 20-day saving in splitting the trial in this way. There would therefore be a great benefit if T2 was avoided, either because the claim is dismissed after T1 or it has settled.
72. Third, while I can see that settlement would be more likely if the parties have full details of the other side's case, which they would get if there was to be a full trial of the issues at T1, if the Claimants are required to progress their case on reliance and limitation in parallel, the Defendant will have far fuller visibility of the case it is facing and that should promote settlement both before and after T1.

73. Fourth, it seems to me that it is consistent with a split to progress the Claimants' cases in such respect, and I am not particularly impressed by the suggestion that this imposes a huge burden on the Claimants. They have brought these claims, and I criticised them at the last CMC for their failure to progress them very far after three years. Mr Chapman submitted that they had taken those comments on board and had been working very hard to provide the particulars on standing, reliance and quantum, but as we have seen, they have missed all my deadlines. Once these particulars have been fully provided, I see no reason why there should not be further progress on these vital issues, particularly in the period when the Claimants are waiting for the Defendant's disclosure to come through.
74. Fifth, I am particularly concerned that the Claimants should be actively engaged in the claims they have brought. I am not satisfied still that they have all been so. I understand the difficulties with such a large number of funds in question and the huge number of potential statements in issue in these proceedings, but the Claimants could clearly do more. Mr Chapman referred to all the Claimants having put in particulars of standing. This is not a question of evening up the burden, but it does seem to me that fairness dictates that the Claimants should be doing more to progress their claims and to engage with the process.
75. Sixth, it is also important, for the reasons expressed by Mrs Justice Falk, that the evidence on reliance and limitation is nailed down earlier rather than later, and certainly before T1, because of fading memories and avoiding that evidence being over-influenced by the judgment on T1.
76. Seventh, while I think that an actual trial on all issues of reliance and limitation, and I should say that causation does really naturally go with quantum, would be unduly burdensome on the court and there are benefits to deferring it to T2, I think that the common reliance issues can conveniently be dealt with at T1. These are issues that affect all Claimants and essentially comes down to a legal issue, albeit that there may need to be limited factual and expert evidence

adduced. It is an important legal point, but it is one that should, to my mind, be decided as soon as possible, bearing in mind its wider implications.

77. It would also, if it went the Defendant's way, have a substantial impact on the Claimants who could proceed with their claims. I am sure suitable directions for the progress of those issues can be made, but I do think that it makes sense to deal with a relatively self-contained issue based on common and generic facts at T1.
78. Eighth, there is a risk of bifurcated appeals, but I think that needs to be balanced against the other benefits and the likelihood of disruption to T2.
79. Ninth, and finally, to the extent that this imposes an unwelcome burden on the Claimants, they do have almost the split trial that they were seeking, and there will be some more time in any event because of what I am about to say about timetable and trial start date.

Trial Date and Timetable

80. Mr Chapman said that the Claimants were surprised to see the contents of Mr Lewis' ninth witness statement -- Mr Rupert Lewis is the lead partner at HSF for the Defendant - and his witness statement was served late on Wednesday 10 April. The Claimants were surprised to read that the Defendants could not now comply with the disclosure timetable and were asking for the start of the trial to be postponed for a year to January 2027. He said that no delay to the start of the trial should be countenanced, and while there could be some adjustments to the disclosure timetable, it must remain geared around a start to the trial in January 2026.
81. There are many elements of pots and kettles in this case, but this seems a little rich, bearing in mind the delays on the Claimants' side, and their failures to comply with the existing timetable.
82. Mr Lewis has explained what his firm have been doing in terms of disclosure and the expansion from an already big exercise that was envisioned last October to what is required following the Defendant's failure on the strikeout and the results of the DGHs before Mr Justice Leech.

83. The timetable that I ordered was for extended disclosure, first tranche, by 30 September 2024, then for second tranche documents, being those which may or are subject to foreign law restrictions, to be provided by 28 March 2025.
84. Mr Beltrami said that this was a provisional timetable based on the Defendant's proposals at that time, which included an assumption that it would succeed on its strikeout and that the Brutus and Maxpower allegations would be removed from the claim and there would not need to be disclosure in such respects. This was expressly stated in the recital to my order of 5 October 2023 and Mr Chapman seemed to accept, in the course of the first CMC hearing, that if the parameters around disclosure changed, those times could be revisited. Mr Beltrami described the proposal at the time as “fluid”.
85. Mr Lewis explained the impact of the changes that have occurred, the full extent of which was not appreciated until after the second DGH and the granular detail was worked through. Mr Beltrami said it was made clear in correspondence, and at the DGHs, that the disclosure dates would have to change.
86. One obvious change is the inclusion of the Brutus and Maxpower allegations which are the subject matter of SC plc's appeal. The Brutus allegations require establishing whether they are true or not, by contrast with the existing allegations based on the settlement agreements which are admitted. This has added greatly to the issues for disclosure and six custodians have been added to the original eight, two of whom are specifically related to Brutus.
87. The other main change is as a result of the DGHs which requires new committees to be searched, an increase to the date ranges, and there is a new workstream involving documents collated for the 2019 settlements.
88. Under the original proposal, there were some 50 million documents collected and around 1.1 million documents generated for review. That breaks down to 670,000 for the section 90A custodians and 430,000 for the section 90 custodians. That was the Defendant's original

proposal. But with the expanded exercise, Mr Lewis has estimated that the documents for review will go up to 1.5 million. The exercise has therefore been scaled up by some 35%.

89. Mr Lewis also referred to the fact that the process is taking longer than expected and that this is nothing to do with the numbers on his team, of which there are some 30. All this leads to the suggestion that the Defendant needs until March 2025 for tranche 1, and to August 2025 for tranche 2.

90. Mr Chapman said that HSF is a large firm and it could expand the team in order to do it faster, and that if there was greater focus and management, there is no reason to think that they could not comply with the existing timetable. More specifically, Mr Chapman suggested that the Claimants were prepared to consider alleviating the burden by, for example, delaying certain categories of disclosure, such as in respect of the section 90 documents, which will be principally concerned with SC plc's defence of verification and which the Claimants do not need to see as urgently as the section 90A documents, which are principally concerned with PDMR knowledge.

91. But these suggestions were premised on the notion that the trial date could not be moved and is sacrosanct. However, the trial date was listed on a precautionary basis to try to get something in the diary, particularly given the long delays on the Claimants' side, since the claims were started three and a half years ago. We are still long enough away for changes to be made without unduly disrupting the listing of other cases, so long as that can be done fairly for both parties.

92. In his oral submissions, Mr Beltrami floated the possibility of putting back the trial date to October 2026, instead of January 2027, and said that while the Defendant thought it much more sensible to have the extra slippage provided by a delay to January 2027, it may be possible to revise their timetable and accommodate disclosure and everything that follows from it to a date in October 2026.

93. This suggestion was followed up by a letter I received yesterday from HSF in which they fleshed out this proposal further and put forward a possible alternative timetable. The Claimants offered to respond to that suggestion yesterday, but I declined to invite further submissions on this. I know they oppose any postponement of the trial date and have their own suggested timetable.
94. As is recognised, there is not yet built into the timetable an application by the Claimants to amend their particulars of claim in the light of the Defendant's disclosure, but that will inevitably be a stage in the proceedings. Mr Chapman said that he had assumed that this will be done in the gap between the tranche 1 disclosure and the witness statements. The Defendant is proposing that the Claimants have six months from tranche 1 of disclosure to amend their pleadings. Witness statements can of course only be prepared following the filing and consideration of the amended particulars of claim, and there will also need to be additional added provisions dealing with expert evidence.
95. In my view, the present timetable would make it unlikely that the parties could be properly and fairly ready for a trial starting in January 2026. When that is coupled with the expansion of disclosure that the Defendant is facing, together with the difficulties it has experienced in the process to date, it is clear to me that there needs to be some postponement of the trial date to make it realistic.
96. I also take account of the fact that there will, according to my direction, be included common reliance issues, and the Claimants are required to progress their issues in parallel. The added time will help them on this, but I do not accept that the Defendant needs a whole year's delay and I consider that there may well be some over-egging of the position in Mr Lewis' evidence. Nevertheless, I accept the broad thrust of his evidence about why the original proposals no longer apply. I also bear in mind that the Defendant may succeed in its appeal, and so narrow the disclosure exercise again, but I think a decision needs to be made now so that the parties know where they stand going forward.

97. I was toying with the idea of squeezing the Defendant a bit more than it would have liked by only postponing to May or June 2026, but I think, on reflection, that that could backfire, and that the safest course is for the date to be put back to October 2026. I would ask the parties to organise a suitable timetable that will fairly take us there, including a sizeable extension of time for the first tranche of disclosure, but also perhaps building in further tranches, as suggested tentatively by Mr Chapman.
98. So that is what I order in relation to disclosure, trial date and timetable following the split trial order.

Other Applications

99. I now turn to deal with the other issues that I referred to quite a long time ago now.

(a) Unless Order

100. First is the issue as to whether the extension of time for the responses to the reliance questionnaires should be made on an unless basis.
101. The extension to 31 May 2024 has been agreed. As I have already said, following the service of further questionnaires late on 15 April 2024 - the night before the hearing started - some 915 funds have now complied with and served their questionnaire responses. That leaves approximately 700 funds who have not sent in their responses, or in respect of which the Claimants' solicitors may be in the process of clarifying and collating their responses.
102. Mr Beltrami said that those missing responses are in respect of approximately £485 million worth of claims, and the two funds with the biggest claims have not provided responses, which is somewhat odd. This is in relation to what has been dubbed a “questionnaire lite”, different to the more extensive questionnaires sent in *G4S*, *Serco* and *Barclays*. I generously allowed the Claimants to limit the questionnaire in this way as I considered there were so many funds that needed to respond, and in the hope that at least they would do so in the time allotted.

103. Mr Beltrami basically said “enough is enough”, and the only way to get these recalcitrant Claimants to engage is by ordering them to on an unless basis, failing which their claims should be struck out. He referred to an earlier decision of Mr Justice Miles in *RSA*, reported at [2021] EWHC 3091, in which the judge said that an unless order would not be unduly draconian in similar circumstances, having regard to the history of non-compliance.
104. Mr Chapman, while expressing regret for the failure to comply with the order that he sought at the first CMC, said that it would be draconian to make it on an unless basis and that this should only be a sanction of last resort. He referred to *Marcan Shipping (London) Limited v Kefalas* [2007] EWCA Civ 463, and also *Al-Subaihi v Al-Sanea* [2020] EWHC 3206 (Comm). He said this is not the straightforward task that it may seem, as it required the Claimants to obtain information from third parties in respect of the particular funds and how they went about deciding whether to trade in the SC plc shares. He also prayed in aid the fact that Signature are new to these proceedings, but that is clearly the Claimants' own choice and not really a particularly valid explanation.
105. I was tempted to make the order on an unless basis because of the substantial delays, not just since my order, but also going back to 2021, when the Defendant started asking questions about reliance and which the Claimants procrastinated over. But I have just about been persuaded that we are not quite at the stage when an unless order would be fair and justified. I take into account the fact that I have now extended the trial date and timetable generally. But this remains important because reliance issues are to be progressed and sampling needs to take place based partly on these questionnaire responses.
106. So this will be an expressly final order, meaning that any further extension that is applied for will definitely be on an unless basis.

(b) Quantum Particulars

107. Next on the agenda is the Defendant's application in relation to the quantum particulars, which application was only issued late last week. I referred to a new witness statement of Mr Spillman, a partner in Signature on behalf of the Claimants, which was served during Wednesday's hearing and which I read yesterday. His position is basically that the application is premature as the parties have been discussing these particulars in correspondence and that the no loss Claimants have now reduced from 14 to 6, and there is an overlap with the order of Mr Justice Leech on the particulars of standing, because the requirement to identify all trades and to not be able to rely on assumptions has an impact as to what can also be provided in relation to quantum.
108. The Claimants are proposing that, as they are intending to appeal that part of Mr Justice Leech's order, and there may be a stay of it, they should only have to provide particulars of quantum four weeks after the May date that Mr Justice Leech set, namely 23 May 2024, or, if a stay is imposed, four weeks after the new date for the trading data to be provided. He said that the Claimants would continue to provide what they could on a rolling basis, but that date should be the backstop.
109. As I have said before, Mr Beltrami fairly accepted that he could not press for an unless order in respect of the no loss Claimants in the light of that evidence. He was asking for 23 May 2024 as the deadline, on the basis that this was in line with Mr Justice Leech's order, thereby accepting that there is an overlapping issue in relation to the clean trading data. There is, therefore, it seems to me, a rational basis for the Claimants' suggestion, and despite the fact that they should probably have made their own application for an extension, it seems to me there should be continued provision of particulars that they can provide on a rolling basis, but that the deadline should be that suggested by Mr Spillman. Quantum is in T2, but the information does need to be provided well in advance of T1, and that is what I will direct.

(c) Costs of Part 18 application

110. That leaves only, I think, the costs of the Part 18 application that I determined on the last occasion. The parties were unable to agree the costs order for this, and Mr Beltrami asked that I order the Claimants to pay the costs of that application and that I summarily assess those costs. The parties were able to agree that the costs of the strikeout should be born as to 75% by the Defendant, and that those should be assessed on a standard basis. No interim payment on account was agreed or sought.
111. The Defendant's costs schedule for the Part 18 application alone, which did overlap with one aspect of the strikeout, was in the extraordinarily high amount of £152,326.15. The Claimants have complained about the very large costs being incurred by the Defendant, including apparently some £450,000 on this hearing alone.
112. The Defendant's application is based on the fact that it was only because the application was issued after years of prevarication by the Claimants that matters were brought to a head at the first CMC. There was certainly a long history, and this is fairly basic information that should have been provided long ago. It was only shortly before the CMC that the Claimants came up with some suggestions in relation to it, and in particular as to the timing for the provision of the particulars.
113. Mr Chapman said that on pretty much all the disputed issues, which was in the end largely about timing, but also included the extent of the reliance questionnaire that should be sent out and the bank knowledge representations, the Claimants actually won. He was not, however, asking for the Claimants' costs, but said that they were taking a reasonable approach by asking for costs in the case on the basis that these issues would have had to have been discussed at the CMC anyway, even without the Defendant's application.
114. I think the Claimants' suggestion does not capture the successful outcome of the Part 18 application. The application was issued because of immense frustration with the approach of the Claimants to providing basic particulars of the claims they have chosen to bring. Even though I

decided timing issues and a couple of other matters, perhaps generously, in favour of the Claimants, I consider that the Defendant was overall the successful party on this application. It does not help the Claimants' cause that they have failed to comply with the order which was in their favour.

115. Accordingly, I do think it is appropriate to order the Claimants to pay the costs of the Part 18 application. I do not, however, think it is appropriate to make a summary assessment, because that might involve considering the extent of any duplication in the statements for the costs of the strikeout or summary judgment application and the costs of this application. Far safer, it seems to me, to leave it all to be considered on a detailed assessment if the parties are unable to agree. In any event, even if there had been a summary assessment, I would have set off the amount against an interim payment on account of the costs of the strikeout.

116. Absolutely finally, I think there was a small issue about an application to amend some of the Claimants' names. I say shortly, in relation to that, that I agree the Claimants' wording in paragraph 20 of the composite draft order in relation to the date of 26 July 2024 by which any such application should be made.