Neutral Citation Number: **[2024] EWHC 2124 (Ch)**

Case No: **FL-2020-000051**

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
FINANCIAL LIST

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

Date: **2 July 2024**

Before :

Mr Justice Leech

- -

Between :

Investors in Barclays	**Claimant**
- and -	
Barclays PLC	**Respondent**

- -
- -

Jonathan Nash KC, Carola Binney and Judy Fu (instructed by **Signature Litigation LLP**) for the **Claimant**
Rosalind Phelps KC, Michael Watkins and Tom Foxton (instructed by **Latham & Watkins LLP**) for the **Respondent**

Hearing dates: **2nd July 2024**

- -

APPROVED JUDGMENT

- -

Mr Justice Leech **Tuesday, 2 July 2024**
(**10:30** am)

Judgment by **MR JUSTICE LEECH**

1. This is my judgment, handed down on 2 July 2024 following the hearing of the second CMC in this Financial List action. I have delivered two judgments in this action which I will call the "**Naming judgment**" the NCN of which is [2023] EWHC 2015 (Ch) and the "**First CMC Judgment**" the NCN of which is [2024] EWHC 235 (Ch) and in which I determined certain pleading and split trial issues. As in the First CMC Judgment, the course which I adopt in this judgment is to follow the draft composite order which was the subject of argument yesterday. I will refer to that draft as the "**Order**" and, where I refer to paragraphs in this judgment I intend to refer to paragraphs in the Order unless I state otherwise. With that very brief introduction I turn to the issues which I have to resolve.

Paragraph 5: Sampling

2. The Claimants put forward seven sample cases and Barclays put forward five. The rationale for both of their selections was to cover the three reliance categories identified in the four reliance questionnaires. There was some overlap between the chosen cases but they disagreed about some of the best examples and the reasons for selection. I was taken to some of the questionnaires and provided with explanations for the different selections but, by the end of the argument, there was a substantial measure of agreement. In my judgment, it is important that the selection of sample cases should appear to be fair and that there should be a balance between those selected by one party and those selected by the other.

3. For reasons to which I will come, it is important to limit the number which should be tried. I therefore direct the claims of the following claimants will be the sample cases: **C5, C199, C212, C220, C224, C276** and **C68**. However, I also consider that there is some value in having reserve cases available in case either the individual cases themselves settle or are withdrawn or if, for some other reason, they do not provide the coverage of issues which the parties had originally anticipated. I will therefore direct that the claims of the following cases be case managed at the same time as the sample cases: **C279** and **C95**. The parties may also wish to add further reserve cases. I therefore give permission for each party to select one more reserve case each if they wish to do so.

Paragraph 9: Trial 1 Issues

4. The parties were agreed that Issue 29 (Limitation) should be tried at Trial 1. The dispute between them was whether Issue 19 (Standing), Issues 20 to 25 (Reliance), Issue 26 (Causation) and Issue 28 (Share Price) should also be tried. Finally, there was a dispute whether three issues of principle should also be tried in relation to the sample cases. For ease of reference, I will refer to these issues or sub-issues as "**Issue 30**" and, whatever decision I make, it seems, to me, sensible that they should be added to the current list of issues and given that number.

5. Mr Jonathan Nash KC, who appeared for the Claimants, submitted that Trial 1 should deal with the Defendant-facing issues (including limitation) and that Trial 2 should deal with the Claimant-facing issues of reliance, causation and quantum. He cited a number of recent decisions in which the split had been ordered. In the most recent of those decisions, *Various Claimants v Standard Chartered PLC* [2024] EWHC 1108 (Ch) Michael Green J ordered that Trial 1 would deal with standing, Defendant-facing common issues and also common reliance issues (which he described in his judgment at [64]). In substance, these issues covered the same ground as Category C reliance in this case and the judge considered the common reliance issues to be, principally, a question of law: see [54].

6. Michael Green J considered all of the relevant authorities to which I was taken before adopting what he described as a "realistic and pragmatic approach," but he gave nine reasons for reaching his decision at [70] to [79] which I will not read into this judgment but I have well in mind. His first reason was that a 76-day trial on Defendant-facing issues (or a 96-day trial if all reliance and causation issues were included) would be a considerable burden on the court. He also considered that there would be more than a 20 day saving of court time if the trial was split. See [70], [71] and [76].

7. Mr Nash submitted that there were three reasons why I should order a split between Defendant-facing issues (including limitation) and Claimant-facing issues. First, he submitted (as the Claimants did in *Standard Chartered*) that, if the Claimants lose, court time will be saved, and, if they win, this will provide an impetus to settlement. Either way, so he submitted, there will be a significant saving in terms of time and costs in relation to Trial 2. Secondly, he submitted that there would be a significant saving anyway if the court determined what statements were actionable (if I can put it that way) before going on to try reliance, causation and quantum. If I

held that only some of the published information or some statements in the prospectus were actionable, then time and costs would be focused on the relevant statements or omissions at Trial 2. Thirdly, he submitted that some of the expert evidence would not be necessary at Trial 1 because that evidence was only relevant to reliance, causation and quantum anyway.

8. These were all persuasive points and, in another case, they might be determinative. But I am not satisfied that they justify delaying the determination of reliance and causation until Trial 2 in the present case for the following reasons:

(1) Neither party submitted that it would not be possible to prepare the sample cases for Trial 1 (which is listed to commence on 6 October 2025) or that it would be excessively burdensome to do so. In particular, Mr Nash did not submit that the sample Claimants could not be ready for trial or that it would impose an unreasonable burden on his team's resources to prepare them.

(2) Trial 1 is currently listed for eight weeks. Mr Nash effectively accepted that the court would not require all of that time to deal with the Defendant-facing issues only. Ms Rosalind Phelps KC, who appeared for Barclays, submitted that the court could try all of the issues of reliance, causation, share price and Issue 30 in eight weeks. I spent some time yesterday with her interrogating her draft timetable and I am satisfied that the court could determine all of the relevant issues at an eight-week trial, given that there are only seven sample cases. In any event, I am prepared to list the trial for 10 weeks on the basis that a further two weeks are available if the trial overruns and, if it does not, this will enable me to make a start on the judgment.

(3) In my judgment, it is better in principle to try all of the issues together if this can be achieved. Neither counsel submitted that as a matter of principle it was better to order a split trial if this was unnecessary or, indeed, that this has become the norm in fraud cases. In my experience, it is far better to try all of the issues in cases of this kind at the same time. If I try all of the issues which Ms Phelps identified in the order, this will leave only the question of quantum to be tried in the sample cases. Moreover, findings on all issues apart from quantum is even more likely to promote settlement than findings on the Defendant-facing issues only. If the court decides a truly representative sample of cases, settlement

negotiations ought to involve the application of decided issues to the remaining cases and then discussions or even horse-trading over quantum.

(4) Further, the Claimants in *Various Claimants v. G4S Ltd* [2022] EWHC 1742 (Ch) and *Standard Chartered* and other cases of this kind were required to give a trade-off in return for postponing the determination of reliance and causation until Trial 2. That trade-off was to progress the remaining cases and demonstrate active engagement by the Claimants in the claims. In the present case, the parties are agreed that, in principle, the Claimants should demonstrate their engagement by continuing to progress the claims at the same time as preparing for Trial 1. It follows that they will have to incur the time and cost of addressing reliance and causation in all cases whether or not I defer the Claimant-facing issues until Trial 2.

(5) Finally, *Standard Chartered* was a very different case. In his opening remarks, Mr Nash, quite properly, emphasised the size of the task which the Claimants now face in interrogating and analysing Barclays' disclosure but without wishing in any way to downplay the size of that task, this is not a case of the same order as *Standard Chartered* (which involves 20 sample cases and a 76-day trial on defendant-facing issues alone excluding limitation). Having heard the disclosure guidance hearing in *Standard Chartered* myself and made a number of other case management decisions, I can readily understand why Michael Green J split the trial in the way in which he did in that case. But the size and burden which he faced are not of the same order in the present case.

9. For these reasons, therefore, I adopt paragraph 9 of The Order as proposed by Barclays, and I will try issues 20 to 25, 26, 28, 29 and 30 at Trial 1 in relation to the sample cases. I have considered whether to hive off share price and the quantum issues in Issue 30 but it seems to me that they can be readily accommodated at the trial and the time taken to try those particular issues will not add to the burden of the parties. I am also satisfied that I should try any outstanding issues of standing in relation to all claims at Trial 1. This is a threshold issue, and it ought to be resolved before the court and the parties commit to a long trial. I will also direct that the parties should file witness statements for CMC 3 identifying the outstanding issues of standing and why they remain unresolved and how the parties hope to resolve them. I hope that this discipline will result in agreement on most, if not all, of the issues before Trial 1.

Paragraph 12: Full Reliance Questionnaires

10. Ms Phelps also submitted that those Claimants in Reliance Categories A and B should now be required to complete full reliance questionnaires because of the inadequacy of the original responses and a number of changes in case. Initially, I was attracted by requiring the Claimants to answer full reliance questionnaires by trial because this would require each Claimant to nail its colours to the mast before the court has decided the reliance and causation issues at Trial 2 and that Claimant witnesses will not be able to tailor their evidence to the outcome of Trial 1. On reflection, however, I am not satisfied that this is a sufficient reason to require them to do so. Findings of reliance are likely to depend on the documents and the inherent probabilities. I also accept Mr Nash's submission that this would be a sledgehammer to crack a nut. I therefore refuse to grant the relief in paragraph 12.

Paragraphs 13 and 14: Particulars of Causation

11. I also refuse to make the orders in paragraphs 13 and 14. Again, I was initially attracted to requiring each Claimant to set out its case on causation but in my judgment this is much better left until the court has decided the issues for Trial 1 in the sample cases. For each Claimant causation will involve issues of fact, expert evidence and legal issues and, in my judgment, it is quite legitimate for the remaining Claimants to wait to see the judgment after Trial 1before they address the questions of causation with the witnesses.

Paragraphs 16 to 18: Expert Evidence

12. The only issue which I have to determine in relation to expert evidence is whether the parties should be permitted to call expert evidence on share price. Ms Phelps explained to me that this involved a form of regression analysis to explain share price movements. In my judgment, this evidence may well be relevant to questions of causation and, in particular, whether individual Claimants would have purchased shares at all and, if so, the price at which they would have bought them. These issues may ultimately be irrelevant as a matter of law. But it is impossible for me to decide that now. In the light of my decision on split trial I will permit the parties to call expert evidence on this issue and I will make the orders in paragraphs 16(c) and 17(c) put forward by Barclays.

13. I will not make any order in relation to US law. However, I have some sympathy with the Claimants' position because paragraph 7 of the Case Memorandum states that Barclays admitted some but not all of the wrongdoing alleged in the NYAG Amended Complaint. I agree with Mr Nash, therefore, that Barclays ought to be capable now of disclosing what breaches of US law it admitted to the NYAG or the SCC without any waiver of privilege. Nevertheless, I will not make any order requiring Barclays to provide this information at this CMC. But I make it clear that I expect it to engage with this issue now so that the Claimants can decide promptly whether it is necessary for them to call expert evidence on US law. Time permitting, I will expect the parties to give me an update on this issue when I hear the strikeout application in two to three weeks' time.

Paragraphs 24 and 25: Disclosure

14. It is common ground that the sample Claimants should be required to give disclosure and the only issue is timetable. Barclays' timetable requires them to complete disclosure by the time of CMC 3. The Claimants' timetable requires them to give disclosure by 28 February 2025. In my judgment, Barclays' timetable is too tight, but the Claimant's timetable makes it impossible for the court to resolve any outstanding disclosure issues or give guidance at CMC 3. I consider it appropriate, therefore, to bring forward the Claimants' timetable by a month and substitute the dates 25 September 2024, 29 October 2024 and 31 January 2025 for the dates in paragraphs 24(a) to 24(c). This enables me to consider any DRD issues at CMC 3 without requiring the Claimants to give their disclosure by that date. Moreover, this allows one more month for slippage in the timetable. But before giving these directions, I will give the parties an opportunity to address me further on the timetabling issues especially given the way that those directions may dovetail with the Orders which I made on 11 and 12 January 2024.

Paragraph 31: Witness Statements

15. Finally, in the light of my decision on the issues for Trial 1 I will order the Claimants to serve witness statements. The date in paragraph 31 reflects the date for service of witness statements in the Order dated 11 and 12 January 2024. Again, I will give the parties an opportunity to address me on the appropriate date in the light of the directions which I gave in January for exchange of witness statements and expert evidence.

Postscript

16. Following the handing down of this judgment, Mr Nash queried the sample cases which I had directed to be heard at Trial 1. In the course of our exchanges, it became clear that I had got **C276** and **C279** (above) the wrong way round and that **C279** should be tried as a sample case and **C276** listed as a reserve case. After Ms Phelps pointed out that **C276** was a particularly high value case and I reconsidered the issue, I directed that **C279** should be tried as a sample case and **C276** held in reserve and the order which I ultimately made reflected this decision.