Neutral Citation Number: **[2024] EWHC 3199 Ch)**

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

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
FINANCIAL LIST, BUSINESS AND PROPERTY (CHANCERY)

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

Date: **13 November 2024**

Before:

Mr Justice Michael Green

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Between:

Persons identified in Schedule 1	**Claimant**
- and -	
Standard Chartered PLC	**Defendant**

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Graham Chapman KC, Shail Patel KC and William Harman (instructed by **Signature Litigation LLP)** for the **Claimants**
Adrian Beltrami KC, Dominic Kennelly and Natasha Bennett (instructed by **Herbert Smith Freehills LLP)** for the **Defendant**

Hearing dates: **13th November 2024**

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JUDGMENT

Mr Justice Michael Green **Wednesday, 13 November 2024**
(**15:49** pm)

Judgment by **MR JUSTICE MICHAEL GREEN**

1. This is the fourth CMC ("CMC4") in this large-scale group litigation brought now by some 217 claimants representing approximately 1,410 funds against the defendant, Standard Chartered Plc, pursuant to sections 90 and 90A and schedule 10A of the Financial Services and Markets Act 2000. The claim is for over £1.5 billion and this is litigation on a grand and complex scale. I will not set out any of the background which is familiar to everyone involved here and which I have set out in judgments I have delivered so far in this case as the assigned judge.
2. I have heard the previous three CMCs, the most recent being on 17 July 2024. There are the familiar issues before me again now, namely: the extent of what the claimants should be obliged to do at this stage of the proceedings, which are now four years old and before the first trial which has been listed for 76 days in October 2026 ("Trial 1"). That trial is predominantly concerned with the defendant's side common issues, but I directed at the last CMC that some of the Trial 2 issues should be progressed on the claimants' side, in relation to reliance and limitation, and that they should be progressed in advance of Trial 1.
3. The matters before me today are mainly about the extent to which those issues should be progressed and also whether and, if so, how far the claimants should be required to deal with standing issues. The claimants basically say that they have been working flat out and there is a huge amount more for them to do, such that they should not be required to carry out extensive further work on standing and Trial 2 issues, save that which is proportionate and reasonable and consistent with the decision to proceed by way of split trial; whereas the defendant says that the claimants are just trying to sit back and let the defendant do all the work to Trial 1 and the claimants will not even do what is necessary to establish each of their standings to sue.
4. There is, as I said during the hearing, quite a bit of posturing going on, with each side trying to put maximum pressure on the other. My task is to ensure that the proceedings run and are

managed as smoothly as possible with a fair amount of the burden applied to both sides, so that there can be an effective and fair trial come October 2026. This will necessarily involve being somewhat broad brush and it may well not do complete justice to the helpful but perhaps over-elaborate submissions made by both sides. I understand how deeply felt the grievances on each side are: the defendant submitting that the claimants have brought this claim without doing the most basic of things, such as checking that each claimant actually has standing to be a claimant; and the claimant saying that the defendant is undermining the point of having a split trial by trying to pile the pressure on the claimants to do lots of things and provide evidence that may, in the end, turn out to be pointless. I need to decide what is the reasonable, proportionate and fair approach to adopt to the directions that are being sought.

5. There has been some measure of common ground, but it is disappointing that there has not been more. So the parties are agreed on the claimants' amendment application in relation to some of the claimants' names.

6. A further significant move has been the issue by the defendant of a strikeout application, which was issued on 6 November 2024 following the handing down of Mr Justice Leech's judgment in *Various Claimants v Barclays Plc* [2024] EWHC 2710, in which he struck out certain claims that are said to be similar to the Common Reliance and delay claims in this case. The issue of that application has meant that the defendant has agreed that any outstanding issues in relation to the Common Reliance claims which are presently directed to be heard at Trial 1, should be adjourned until the strikeout has been determined. So that has relieved some of the pressure perhaps.

7. There has also been agreement from the defendant as to the legal personality of the remaining claimants. But there remain substantial issues on standing, as I will come on to explain.

8. The issues that are before me are as follows:

(1) Standing: the claimants say that this should now be tried by a sample of 12 claimants; alternatively, that standing should be deferred to Trial 2. The defendant says that the claimants should be required to provide lots more evidence on standing in the hope that all these matters can be resolved by consent.

(2) The sample claimants for the Trial 2 issues: the claimants are proposing six sample claimants, whereas the defendant wants either 20 or, alternatively, 14; but also initially was asking for an additional 11 Specific Reliance claimants, making it, according to the claimants, either 31 or perhaps 27, and that there should be disclosure and witness statements from all of these.

(3) Expert evidence directions.

(4)A small issue in relation to the defendant's disclosure.

Standing Issues

9. So turning to standing first, I have already directed that standing issues, insofar as they remain unresolved, should be tried in Trial 1. I was reminded that the claimants have factored in 20 days of the 76-day trial listed for October 2026 to deal with outstanding standing issues. That is because, on any view of the case, it does not seem right that the claimants should be able to carry on as parties through Trial 1 if they do not have standing to claim against the defendant. It's true to say that I directed standing to be heard in Trial 1 on the expectation that the issues on standing were narrowing and, it was hoped, would narrow so far as to become virtually resolved by the time of Trial 1. It looks as though that expectation is failing somewhat.
10. The claimants say that the defendant is being particularly difficult about this and is nitpicking so as to continue to pile the pressure on the claimants, and that the defendant is absurdly not admitting that any of the claimants have standing, even where a custodian has stated that the particular claimant is the beneficial owner of the relevant shares in question. That has, therefore

as the claimants say, led to the defendant seeking wholly unreasonable amounts of disclosure and evidence from all the claimants and potentially making the preparation for and management of Trial 1 impossible. Mr Chapman KC, on behalf of the claimants, submitted that the defendant cannot be relied on to behave reasonably. And even if more documentation is obtained and disclosed, there can be no confidence now that the standing issues will narrow and be conceded so as to avoid spending time at Trial 1 on it.

11. The claimants seek to suggest that this is not such a foundational issue as the defendant is claiming and that at least the transactional details that the defendant is demanding are really only relevant when the court comes to decide quantum in Trial 2. Furthermore, it is much more suited to be decided at that stage, because the experts will have had to work out if any particular claimant did indeed own shares or an interest in securities at the relevant time and, if so, for what period and for how much they are claiming.

12. So Mr Chapman's primary case is that this should be decided at Trial 1 by way of sample claimants in the hope that that will cover a sufficiently broad range of claimants so as to lead to a decision one way or another that will impact all claimants. The judgment would not be technically binding on all claimants, but hopefully influential enough. And he proposes a sample of 12 claimants, six selected by each side, and certain directions as to when they would provide their evidence and disclosure. He showed me by way of example three instances where the claimants had obtained a custodian letter which stated that the relevant shares were held by the claimant as beneficial owner. In one case the letter had attached to it a transaction list showing how the shares came to be held by the particular claimant. In another, the letter had attached the relevant custody agreement.

13. Mr Beltrami KC, on behalf of the defendant, had a few comments to make about these examples. His solicitors even went to the extent of justifying in a two-page letter sent overnight as to why the defendant remained unconvinced about the evidential strength of a custodial letter

from HSBC. But I agree with Mr Chapman, this did not really improve or justify the defendant's stance on that matter. Rather, it indicated the extent to which the defendant is prepared to go to avoid conceding anything on this. Mr Chapman's point was that the defendant was being unreasonable in not accepting that evidence as sufficient to prove standing, and that there could not be any confidence that if more information was obtained, the defendant will suddenly accept standing. Rather, it is likely that it will continue to pressure the claimants and demand yet more information and evidence. There is some substance to that allegation.

14. Mr Beltrami flatly denied that the defendant was being nitpicking or unreasonable. He said that the defendant has carefully scrutinised the evidence provided by the claimants and it remains unfortunately deficient such that the defendant is unable yet to accept that any of the claimants have standing.

15. This somewhat extreme position is unfortunate in my view, but the defendant is entitled to adopt it. The defendant says that there should be a very different approach to that suggested by the claimants.

16. Mr Beltrami divided the issues up into four: (1) the question of beneficial ownership of shares; (2) the question of ultimate beneficial ownership; (3) the transactional data; and (4) the direct participation in rights issue claims under section 90.

17. In relation to each of these, he submitted that there should be the following samples and evidence in disclosure.

(1)On beneficial ownership, which, based on the *Tesco* case, seems to be accepted is necessary to prove for the claimants to have a qualifying interest in the defendant's shares, he divided this between those claimants who have provided custodian letters asserting a beneficial interest and those who have not: for those in the former category, he asked for a sample of 21 to provide disclosure of custody chains, meaning evidence as to the ownership of the shares all the way up to the legal owner, whatever that is, and for that to be provided by 31 March 2025; but

that if the defendant remained thereafter unsatisfied with that evidence, then all the claimants within that category were to make disclosure of their custody chains by 31 July 2025. In relation to the latter category of those claimants who have not provided custodian letters asserting a beneficial interest, he seeks disclosure from every single one of those claimants.

(2) On ultimate beneficial ownership, which may or may not be a requirement of standing depending on one's view of the law, the defendant has accepted that 192 claimants who do manage successfully to prove beneficial ownership will also necessarily have proved ultimate beneficial ownership. For the remaining 25 claimants, the defendant has either denied or not admitted ultimate beneficial ownership in such circumstances based on disclosures to date. This principally concerns foreign entities or where there are contractual rights that intervene, rather than equitable interests. In fact, six of those claimants, the defendant has already decided that it will not accept that they are ultimate beneficial owners. So it seems, on its case, they will in any event, whatever happens hereafter, have to prove their standing at trial. The remaining 19 of the 25, the defendant additionally wants their evidence of ultimate beneficial ownership.

(3) In relation to transactions, the defendant wants a transaction list certified by each claimant's custodian. Alternatively, if that is not available, it wants the unclean trading data that was provided to the claimants' expert in order to produce the clean trading data. And in the further alternative, if that is not available, Mr Beltrami was asking for the underlying documentation, such as contract notes. All this, apparently, is to be required by 31 March 2024.

18. Mr Beltrami is effectively seeking disclosure from all the claimants and in relatively short order. In support of these disclosure requests, Mr Beltrami referred me to Mr Justice Bryan's decision in *Aabar Holdings SARL v Glencore Plc* [2024] EWHC 1556 (Comm). Mr Justice Bryan did not think that this would be an arduous task in that case, and it appears that the claimants were willing to provide the further information that was being sought. Mr Chapman has urged upon me the oppressive nature of such a requirement in this case, with so many claimants involved. I

am also aware that in other section 90 and 90A claims, the defendant has been prepared to accept the sort of evidence provided by the claimants in relation to standing, although on that too, as Mr Beltrami pointed out, there are also some cases, such as *G4S* and *Serco*, where standing seemed to remain in play right up to the trial.

19. The fourth issue was the rights issue participation issue. The defendant wants evidence of the claimants' direct participation in the rights issue; that is, for those who are claiming under section 90. And by that, he means not just purchases on the secondary market, but actual evidence that the claimant or fund actually directly participated in the rights issue by subscribing for shares in the defendant. I speculated whether this was information that the defendant itself would have, but in any event it is information that the defendant is seeking from 64 of the claimants, representing some 255 funds.

20. So from that, one can see how sharply divided the parties are on this. I think that to solve this conundrum one needs to refocus on what the purpose of this whole process was and why we are in the position we are in.

21. Standing is obviously a fundamental issue and each claimant has to prove their standing to sue. But it is just one issue that the claimants have to satisfy the court on and to the standard of the balance of probabilities. It could just have been left as an issue on which they would have provided disclosure in due course in respect of documents within their control that were relevant to that issue. They may well have been content to rely on the letters from custodians that state that they are the beneficial owners and it is difficult to see that that would not be accepted by a court having to decide these issues. Where they do not have such letters and/or transaction data they may have more difficulty. However, it would be disproportionate, the claimants say, for them to have to go to trial and have to prove standing in relation to all 217 claimants. Furthermore, it would actually be impossible to do and it would so disrupt the trial as to make it unmanageable.

22. The court has decided at quite an early stage to try to force this issue to avoid the claimants' doomsday scenario of having to prove standing for all the claimants at Trial 1. Having embarked on that process, and trying to eke out the claimants' case on standing, it is now in the position where it has not achieved the goal of narrowing and it potentially could go much wider and out of control. So I start from the position that the goal of this exercise is to narrow the issues in the hope that it will, in time, be a non-issue and the defendant becomes satisfied that all the claimants that are proceeding into Trial 1 have standing.
23. So, first of all, in my view, this has to be decided either before or at Trial 1. There is no merit in putting it off and one way or another it needs dealing with. I therefore reject the claimants' alternative position that this be deferred to Trial 2.
24. In principle, it seems to me that a form of sampling is appropriate. To a very limited extent, that seems to be accepted by the defendant. But the claimants ask me to direct at this stage that standing will be tried at Trial 1 by way of sampling, and they put forward their suggestion that 12 sample claimants, six selected by each party, and for those 12 to provide disclosure and witness statements.
25. Mr Chapman said that it was important to be clear at this stage how standing was going to be tried, because that would enable proper management of the issue to trial. Mr Beltrami strongly resisted the issue of standing being tried by sample. He said it is a foundational issue that does not lend itself to sampling and that each claimant has either to satisfy the defendant or the court that it has standing.
26. I am not implacably opposed to standing being tried by way of sample, but I think it's far too premature to be deciding that. In my view, we need to give the narrowing of issues a further opportunity to succeed by providing for some more evidence and disclosure to be given and in the hope that the defendant will feel able to agree that at least some of the claimants do have standing.

27. At the moment, as I said, nothing has been conceded and that needs to change. I do not think that that process will be helped by directing now that only 12 sample claimants will be tried. So I will not direct that at this stage, but I leave open the possibility that this can be reviewed next year when things will hopefully have been moved on.

28. So what to do in the meantime? I do not see it is necessary, sensible or proportionate to require or have as a backstop that all claimants must provide custody chain documents, going all the way up to the legal owner of the shares, that is the person registered on the defendant's share register and likely to be an unrelated amorphous member of CREST or such like, or to go down below the stated beneficial owner to test ultimate beneficial ownership.

29. On the defendant's proposal, while it is purporting to limit it to a sample of 21 in one category, namely those who have provided custodian letters asserting beneficial interest, in reality the likely effect, going on past performance, is that this will lead inexorably to the provision of custody chain evidence from all claimants. I think the claimants know that they need to obtain custodian letters for all their claimants, but they have stopped the process at the moment for a second time -- as explained by Mr Spillman in his witness statement -- because they thought it was not getting them anywhere. So while I think that the claimants would be well advised to restart obtaining custodian letters in respect of all the claimants, I do not think it is appropriate to specifically order them to do so.

30. Instead I think the best way of dealing with this is to adopt the claimants' sampling suggestions, namely 12 samples, 6 chosen by each side, and hopefully to cover various different categories of claimant in various stages of disclosure in relation to their standing and for those 12 to disclose -- as specified in the claimants' draft order at paragraph 10: (1) custody chain evidence, and I add to that both ways, therefore up and down, up to the legal owner and down to the ultimate beneficial owner; (2) unclean trading data with the explanation that has been offered; and (3)

direct participation evidence in relation to rights issues for those in the sample claiming under section 90.

31. Now, I know that the defendant was seeking much more, particularly in relation to transaction data, but I do think that that request went way too far. It has clean trading data for every claimant and that has been prepared by an expert. It may, in due course, wish to interrogate that data to check whether it matches the unclean data and underlying documents; but there is no reason to disbelieve what the expert has produced and it seems to me that that might more properly be interrogated as part of Trial 2 on quantum.
32. For the purposes of standing to sue, each claimant has to show it is or was a beneficial owner of shares. That is best achieved by providing letters from their custodians, verifying the holding and the transactions effected through it. That, in my view, will in all likelihood be sufficient to prove standing on the balance of probabilities.
33. By ordering the disclosure that I have from the 12 sample claimants, I am hoping that the defendant will be able to gain some comfort that there is likely to be nothing to see beyond the custodian letters and it can trust them. Once they have seen the disclosure, the defendant will be able to decide which categories it might be able to accept for standing purposes and in respect of which categories it still needs more information.
34. The further particulars of standing can be updated as provided for in paragraphs 20 to 21 of the claimants' draft order. Then the matter can be revisited on the next occasion when the position is clearer and decisions can be made as to whether further disclosure is required and how the matter should be tried should it be necessary to do so. That is my decision in relation to standing.

Trial 2 Sample Issues

35. Now, turning to the Trial 2 sample issues, after a bit of toing and froing, the position now appears to be as follows:

(1) The claimants are suggesting 6 sample claimants to deal with the Trial 2 issues of reliance and limitation. They propose directions for disclosure and witness statements, recognising that the effect of my earlier direction is that this is what needs to happen.

(2) The claimants say that the defendant was in reality looking at 31 sample claimants. However, as Mr Beltrami has clarified, the headline figure is 20 claimants with an alternative of 14. There is a separate category of 11 Specific Reliance claimants which, somewhat bizarrely, the defendant was saying should provide disclosure also, pre-Trial 1. As it has turned out, there are Specific Reliance claimants within the claimants' 6 sample claimants and so that is covered. I think that Mr Beltrami recognised that there should not be a separate category for this pre-Trial 1.

36. So the competition is between the claimants' 6 sample claimants and the defendant's 20 sample claimants, or alternatively its 14 sample claimants. The claimants' 6 claimants are included in the defendant's sample claimants. So it is whether the 8 or 14 extra are needed to provide adequate coverage of the issues that arise.

37. Mr Chapman referred to four main factors that I should bear in mind following Mr Justice Trower's judgment in the *Serco* case, 2023 EWHC, 119 (Ch).

(1) The "greater guidance factor", as he called it, so that the sample provides as much guidance as possible for the non-sample claimants.

(2) The "key differentiating factor" which seeks to ensure that materially different facts are picked up in the sampling process.

(3) The "not every difference factor" which seeks to ensure that not every difference between the claimants needs to be captured by the sample; and

(4)The “representativeness versus burden balance factor” that does not allow perfection to be the enemy of the good.

38. I bare these factors in mind in considering what to do.

39. In that respect, the main difference between the parties was in relation to trading windows. The defendant suggested that the relevant period should be divided into 41 periods by reference to when each piece of published information was issued. They said that there needed to be a claimant for all such periods, so as to capture any slight differences in the published information.

40. The claimants said that the period should instead be divided into 6. The trouble with that is that there are some very long periods, three or four years, during which different pieces of published information were issued. As Mr Beltrami demonstrated, the last period of 4 years is covered by only one of the claimants' samples, but the published information was very different at the end of that period from the beginning. As each claimant had said that they relied on the latest published information, it therefore seems to me that the samples need to cover all the information that was issued.

41. Mr Beltrami produced a spreadsheet indicating the periods covered by his and the claimants' samples. That showed that in one version, if 4 claimants were added to the claimants’ 6 samples, then there would be complete coverage of all the trading windows. In my view, that is important.

42. In order to get to 14 or 20, the defendant has added further claimants by reference to so-called “conduit reliance”, which is where other sources acted as a conduit for the published information to the particular claimant, and “holding only reliance” where there are claimants who are only claiming that they held on to shares in reliance on published information. Many claimants are relying on the fact that they held on to shares but are also claiming that they acquired and disposed of shares in reliance on such information as well. The defendant has only identified two who are “holding only” claimants, as it is put. The claimants have both categories within

their 6 sample claimants, although they are not "holding only" claimants. It seems to me unnecessarily granular to require a "holding only" claimant. Obviously the more the merrier, but I have to balance this with the burden on the claimants and not undermine the principle that I was working off and upon which the split trial was ordered.

43. In my view, the appropriate number of sample claimants is the 10 on the sheet that I was handed by Mr Beltrami. I know this is not the 14 or the 20 that he was suggesting, but the 10 on that sheet seemed to cover all the relevant trading windows. That would provide, it seems to me, sufficient coverage as they also include the other categories of "conduit reliance", "holding only" and also the Specific Reliance cases. That is sufficient coverage for those issues at least at this stage and that is what I propose to order.

44. As to timing, the defendant has relented from its original proposal which did seem somewhat unreasonable. I will adopt the claimants' timings, being: the section 2 DRDs for the 10 claimants by 31 March 2025; disclosure by 15 December 2025; and witness statements by 31 March 2026.

45. I recognise that what the claimants were proposing in their draft order was in relation to the 6 sample claimants that they were suggesting, but it does not seem to me to be unduly burdensome or unreasonable for them to do this by those dates in respect of the 10 sample claimants that I have directed.

Expert Evidence

46. There are two further subsidiary issues as I indicated at the outset. First of all, expert evidence. The claimant is applying for expert evidence in relation to corporate brokering. The defendant has remained neutral on this and left it to the court to decide whether such evidence would be of assistance. Mr Beltrami did somewhat slightly question whether such evidence is really necessary in the circumstances of this case but in my view it would be of assistance to have this evidence and I will allow it to be adduced.

47. I will also allow an expert report of up to 50 pages to be provided and direct that it be disclosed in April 2026 with the defendant having two months to respond with their own expert evidence and the directions then to follow as is set out in the claimants' draft order.

48. Mr Beltrami suggested that this sort of expert evidence should be disclosed earlier in 2025 as it does not depend on factual evidence but I do not think there is any good reason to disrupt the normal course of events and we should have expert evidence being served and the consequential directions taking place after witness statements have been served.

Defendant's Disclosure

49. The final issue that I need to deal with was an aspect of the defendant's disclosure. This is where the claimants are seeking disclosure on reliance issues, which are issues 18 to 26 in the list of issues. When the DRD was drafted and established some months ago the claimants were not seeking disclosure from the defendant in relation to those matters, but they have now changed their mind and wish the defendant to go back and effectively restart its disclosure to include reliance documents from its investor relations department.

50. The claimants say that the defendant's investor relations department is very likely to possess relevant documents, including communications indicating what issues investors were talking about. This is nothing to do with what the specific claimants might have been communicating with the defendant were or the other way because no claimant actually relies on specific statements outside of the published information.

51. It does strike me as a bit of a stretch and bordering on a fishing expedition, as Mr Beltrami suggested. I think that if the claimants really do want this sort of disclosure that they will have to issue a specific disclosure application and it can be considered under that jurisdiction.

52. I am not going to direct that the defendant provides such disclosure on this occasion.

53. So I think that concludes the matters.