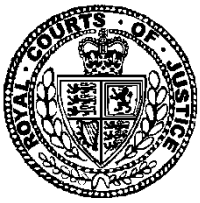

Neutral Citation Number: [2022] EWHC 103 (Ch)

IN THE HIGH COURT OF JUSTICE **CR-2021-001321**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)

7 Rolls Building
Fetter Lane
London EC4A 1NL

Date: 19 January 2022

Before:

THE HONORABLE MR JUSTICE MARCUS SMITH

IN THE MATTER OF CHARLES STANLEY GROUP PLC

and

IN THE MATTER OF THE COMPANIES ACT 2006

Mr. Stephen Horan (instructed by **Norton Rose Fulbright**) for the **Applicant** (Charles Stanley Group plc)

Hearing date: 19 January 2022

Approved Judgment

I direct that no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic

Mr. Justice Marcus Smith:

INTRODUCTION

1. I have before me this application for the approval of a takeover scheme of arrangement (the **Scheme**) under Part 26 of the Companies Act 2006 (**Act**) (ss.895-901). Charles Stanley Group plc (**Company**), whose shares are admitted to trading on Main Market of the London Stock Exchange, is to be acquired by a bid vehicle, Raymond James UK Wealth Management Holdings Ltd (**Bidco**). The Company's group provides wealth management services to private clients, charities, trusts and institutions in the UK.

2. Bidco is a Jersey incorporated private company and a wholly owned subsidiary of Raymond James Financial, Inc (**Raymond James**), a company incorporated in Florida and listed on the New York Stock Exchange. Raymond James is a multinational independent investment bank and financial services company.

3. The bid has been subject to the City Code on Takeovers and Mergers (**Code**).

4. The consideration is 515 pence per Scheme Share, which values the Company at approximately £278.8 million. This is a premium of 43.5% on the closing price of 359 pence on 28 July 2021, the last business day before the announcement of the bid (and commencement of the offer period under the Code). There is also a loan note alternative form of consideration (**Loan Note Alternative**), but insufficient elections have been made and no loan notes will to be issued. I do not address the Loan Note Alternative further.

THE FCA CONDITION

5. The Scheme timetable was set out in the **Scheme Document**. This did not specify a date for the sanction hearing, as it was uncertain when satisfaction of the **FCA Condition** would occur. This condition relates to approval by the Financial Conduct Authority (**FCA**) of the change of control of two group companies regulated by the FCA deemed to occur upon the Company being acquired by Bidco.

6. The expectation was that satisfaction of the FCA Condition would occur in the fourth quarter of 2021 and the timetable indicated that the sanction hearing would be held within 14 days of satisfaction of the condition. The Company announced on 25 November 2021 that it expected that the FCA Condition would be satisfied in time for the Scheme to become effective on 22 December 2021.

7. In the event, the FCA Condition was satisfied on 21 December 2021 and the present date for the sanction hearing – 19 January 2022 – was arranged with Chancery listing accordingly, as the earliest available date. Interested parties were kept fully informed of the timetable.

APPEARANCES AT THE HEARING

8. No opposition to the Scheme has been notified nor is any expected. The Company is represented before me today by Mr Stephen Horan of counsel, and I am very grateful for his submissions – written and oral – before me today. This Judgment draws substantially on his very full written submissions.

9. Bidco appears at the hearing by Mr Horan in order to give the undertaking to be bound by the Scheme, as envisaged by recital F of the Scheme, and as reflected in the draft order before me. No other parties appeared before me today.

TIMETABLE AND COMPLETION

10. The Court Meeting of Scheme Shareholders to approve the Scheme was held on 16 September 2021, with the requisite majorities obtained. The Company's Board has confirmed that having consulted with its financial adviser, Rothschilds, no events or matters have arisen since the Court Meeting which the Board considers might reasonably be relevant to a proper assessment of the Scheme or might reasonably have caused Scheme Shareholders to vote differently at the Court Meeting had they known of such events or matters.

11. If the Scheme is sanctioned today, 19 January 2022, the last day of dealings in the Company's shares on the London Stock Exchange will be the following day, Thursday 20 January. The Scheme Record Time (i.e. the time at which entitlement to the Scheme consideration is determined by reference to the Company's register of members) is 6pm on Thursday 20 January. The Scheme will be made effective in the early hours of Friday 21 January by delivery of the order sanctioning the Scheme to the Registrar of Companies in Cardiff. Suspension of trading in the Company's shares on the London Stock Exchange will occur before commencement of trading on Friday 21 January and delisting will occur by 8am on Monday 24 January. The Scheme Consideration will be paid with 14 days of the Scheme becoming effective.

SHARE OPTIONS

12. Shares vest under certain of the Company's employee share schemes upon the Scheme being sanctioned. Some of these shares will be Scheme Shares, to the extent they have been issued before the Scheme Record Time. Awards under the Company's SAYE plan unvested before the Scheme is sanctioned become exercisable for 6 months after the Scheme is sanctioned. Any shares issued after the Scheme Record Time pursuant to these vested awards will not be Scheme Shares but will be automatically acquired by Bidco for the same consideration as the Scheme consideration, under conventional provisions inserted into the Company's articles of association at the general meeting of the Company (**General Meeting**) held on 16 September 2021, immediately following the Court Meeting. These provisions are set out in art. 201 of the Company's articles, in particular at art. 201(c).

BEARER SHARES

13. One corporate matter, concerning bearer shares, needs to be addressed, which came to light in the course of preparing for and launching the Scheme. The Company had historically issued share warrants to bearer (commonly referred to as bearer shares) which had been overlooked by the Company at the time the Government sought to abolish bearer shares in 2015 with a procedure introduced by schedule 4 of the Small Business, Enterprise and Employment Act 2015 (**SBEEA**).

14. The last share warrants to bearer had been in issued by the Company in about 1929. There were 84,988 ordinary shares, or about 0.16% of the Company's shares represented by share warrants to bearer on the Company's register of members. Their continued existence, and the failure to deal with them under sch. 4 of SBEEA, came to wider attention in the summer of 2021, as part of the work done to prepare for the Scheme.

15. Initially, the Company sought to see if sch. 4 of SBEEA could be complied with to deal with the bearer shares. Schedule 4 set out a procedure for allowing surrender of share warrants to bearer and registration of shares in the warrant holders name, and a specific means of cancelling the warrants not suspended and the corresponding bearer shares.

16. One difficulty with sch. 4 of SBEEA was that on its face the availability of its procedures expired in 2016. This was confirmed by Chief Insolvency and Companies Court Judge Briggs on 20 August 2021 (in a hearing held in conjunction with the Company's separate application for permission to convene the Court Meeting). Judge Briggs refused the Company's application for a suspended cancellation order for the bearer shares under sch. 4 of SBEEA by his order of 20 August 2021.

17. The Company instead sought to cancel the bearer shares through a conventional court-approved reduction under ss.641, 645-649 of the Act. The scheme documents explained this approach. The Court confirmed the cancellation of the bearer shares on 5 October 2021 (per Judge Briggs), and the cancellation became effective on the same date.

THE SCHEME AND ITS OPERATION

18. The Scheme is set out in the **Scheme Document**, and will also be annexed to the form of the sanction order, a draft of which is before me. The Scheme is a conventional transfer scheme under which the Scheme Shares are transferred to Bidco in return for which Bidco pays each holder of Scheme Shares as at the Scheme Record Time 515 pence per Scheme Share. As noted, the Scheme Record Time is 6pm on the business day after the Court sanctions the Scheme.

19. The Scheme includes the concept of Excluded Shares, being (i) shares in which Bidco or its group are interested, and (ii) shares held by the Company in treasury. Excluded Shares are not Scheme Shares. But the concept of "Excluded Shares" in this Scheme remained theoretical as no such shares existed.

20. Clause 1 of the Scheme deals in conventional terms with the mechanics and protections for the Bidco on the transfer of the Scheme Shares. Clause 1(A) provides that Bidco receives the Scheme Shares with full title guarantee and free of Encumbrances. Clause 1(B) empowers Bidco to appoint a person to execute necessary instruments of transfer. The effect of this clause is also that HMRC treats the instruments of transfer as stampable and not the Scheme. Clause 1(C) is a residual protection for Bidco, giving it control of the Scheme Shares in the period between the Scheme becoming effective and the transfers of the Scheme Shares being completed. This covers the period whilst Bidco waits for stamping of the instruments of transfer to be confirmed by HMRC as registration in the register of members is subject to stamping. Clause 6(A) states that the Scheme becomes effective upon delivery of a copy of the order to the Registrar of Companies. Section 899(4) of the Act provides that the Court's order has no effect until a copy of it has been delivered to the Registrar of Companies. The Long Stop Date for the Scheme becoming effective is 31 January 2022. It is expected that the Effective Date will be 21 January 2022.

21. Settlement of the consideration is addressed in clause 3. In accordance with Code requirements, Bidco has 14 days from the Effective Date to pay the Scheme consideration. There are settlement arrangements through CREST, the securities settlement system operated by Euroclear and used by the London Stock Exchange, as well as by cheque. Clause 3(A)(iii) makes provision for settlement of consideration in respect of Scheme Shares to be issued or transferred in respect of the Company's employee share schemes to be done through the payroll with deductions for any taxes.

22. Clause 3(E) makes provision for any sums relating to uncashed cheques be held on trust for 12 years for the relevant Scheme Shareholders to claim, which mirrors arrangements for takeovers done by contractual offer.

23. The Code requires any bidder who announces a firm intention to make an offer where the consideration comprises cash to be cash confirmed i.e. that confirmation that the bidder will have sufficient resources to pay the consideration in full. This is the effect of rule 2.7(a), (d) and 24.8 of the Code, which I shall not set out further. The cash confirmation has been given by Raymond James Financial International Limited, the financial adviser to Raymond James and Bidco, and is set out in the Scheme Document. The Scheme consideration is to be financed by Raymond James from existing cash resources on its balance sheet.

COURT MEETING AND GENERAL MEETING

24. The Court, by order of Chief ICC Judge Briggs on 20 August 2021 (**Directions Order**), convened a meeting of holders of Scheme Shares, to consider, and if thought fit, approve the Scheme. Notice of the Court Meeting appears in the Scheme Document. As contemplated by the Directions Order, the **Court Meeting** was convened as a hybrid meeting, being a physical meeting at the Company's registered office at 55 Bishopsgate, London EC2N 3AS, which could also be attended remotely through an electronic platform known as Lumi provided by a company within the Link Group, the Company's share registrars.

25. Scheme Shareholders were permitted to attend the Court Meeting physically, but extensive guidance for remote participation was also provided. Only one Scheme Shareholder attended remotely, but elected to vote by way of a previously submitted proxy.

26. The Scheme Document was sent to all the Company's shareholders on 25 August 2021 by post or by notification by post of its availability on the Company's website The Scheme Document was also published on the Company's website on 25 August 2021.

27. Notice of the Court Meeting was also published in the Daily Telegraph on 25 August 2021, in accordance with the Directions Order, as there were 141 "gone away" shareholders, representing approximately 29.13% of the Company's members at the time of posting of the Scheme Document, although they only represented 0.37% of the total number of shares in issue.

28. There are two departures from the expected process for sending communications, and to the terms of the Directions Order, which have been drawn to my attention.

29. First, the Scheme Document was not sent to 29 Scheme Shareholders who were registered with addresses in South Africa (25 of them) and in the USA (4 of them), who in aggregate held approximately 0.08% of the Scheme Shares. They were treated as Restricted Scheme Shareholders as the jurisdictions in which they were resident were thought potentially to raise issues about posting into them, because of the existence of the Loan Note Alternative. The Directions Order contemplated such a course, but there was not strict compliance with the terms of the Directions Order in ascertaining the nature of the possible restrictions. In mitigation, 26 of the 29 Scheme Shareholders were "gone aways" who would not be expected to receive the documents if sent to them. The Scheme Document was available on the Company's website and the Court Meeting had been advertised in the Daily Telegraph. The numbers involved were inconsequential to the outcome of the Court Meeting.

30. The second departure was that the Directions Order contemplated three forms of direct communication with Scheme Shareholders: (1) posting hard copies of all the documentation; (2) posting a notice of availability of the Scheme Document on the Company's website together with proxy forms and Loan Note election forms; and (3) emailing notification of the availability of the Scheme Document on the Company's website, although they would be posted hard copies of the proxy form (para 2(b) of the Directions Order). This last form of communication was merged with the second, so that email communication shareholders instead received a notice of availability by post together with the related forms, rather than an email.

31. Obviously, there should have been strict compliance with the terms of the Directions Order. But the departures from it have been drawn to my attention, and I do not consider them to be material to the order I am being asked to make today.

32. The Court Meeting was duly held on 16 September 2021 at which the requisite statutory majorities approved the Scheme. Sir David Howard, Chairman of the Company, acted as Chairman of the Meeting, as directed by the Directions Order.

33. At the Court Meeting, 72 (out of 577) Scheme Shareholders attending and voting in person or by proxy 37,998,876 Scheme Shares out of a total of 52,132,834 Scheme Shares entitled to vote at the Voting Record Time (6.30 pm on 14 September 2021). This represents a turnout at the Court Meeting of 12.48% by number of Scheme Shareholders and approximately 72.89% by value of Scheme Shares.

34. 99.99% of the Scheme Shares voted at the Court Meeting were voted in favour the Scheme, well in excess of the statutory requirement under s.899(1) of 75%. 67 of the Scheme Shareholders voted for the Scheme with 7 against (90.54%), well in excess of the other limb of the s.899(1) requirement, being a majority by number of holders of those attending the Court Meeting in person or by proxy.

35. There were 2 registered holders who voted some of their shares for the Scheme, and some against. These were nominee holders with different underlying beneficial holders. As is conventional, and in accordance with the Directions Order, these split proxies were treated for headcount purposes as one vote for and one against. Accordingly, the number of shareholders voting for the Scheme (67) and the number voting against (7) are in aggregate slightly greater (by 2) than the total number of shareholders voting at the Court Meeting (72).

36. 20,081,556 Scheme Shares (or 38.5%), as at close of business on 23 August 2021, were subject to irrevocable undertakings to vote in favour of the Scheme. Details of the undertakings were provided in section 8 of Part 10 of the Scheme Document.

37. At the General Meeting of the Company, which followed immediately after the Court Meeting, special resolutions were passed, approving the Scheme and authorising the taking of steps to further carry it out.

THE COURT'S JURISDICTION AND DISCRETION

38. The jurisdiction of the Court is derived from ss. 895 to 899 of the Act. The power to sanction the Scheme is contained in s.899.

Class(es)

39. The classic test to be applied for determining a class for the purposes of a scheme of arrangement is given by Bowen L.J. in Sovereign Life Assurance Co. v. Dodd [1892] 2.Q.B. 573 at 583 as "those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest".

40. As Lord Millett in the Hong Kong Court of Final Appeal observed in UDL Argos Engineering & Heavy Industries Co. Ltd. v. Li Oi Lin [2001] HKCFA 19 at [17]:

> "The principle upon which the classes of creditors or members are to be constituted is that they should depend upon the similarity or dissimilarity of their rights against the company and the way in which those rights are affected by the Scheme, and not upon the similarity or dissimilarity of their private interests arising from matters extraneous to such rights."

(Following a comprehensive overview of the authorities on the composition of classes ([15]-[26]), Lord Millett usefully summarises the principles at [27].)

41. Shareholders having similar rights under a scheme, but different commercial interests, does not affect class composition. It might, however, be relevant to the exercise of the Court's discretion. The Court is not bound by the decision of the court meeting.

> "A favourable resolution at the meeting represents a threshold which must be surmounted before the sanction of the court can be sought. But if the court is satisfied that the meeting is unrepresentative, or that those voting in favour at the meeting have done so with a special interest to promote which differs from the interest of the ordinary independent and objective shareholder, then the vote in favour of the resolution is not to be given effect by the sanction of the court": Re BTR plc [2000] 1 BCLC 740 at 747.

42. In determining class composition, the Court has emphasised that the rights arising in relation to a scheme should not be assessed too narrowly. The Court is not confined to looking at the scheme in the narrow sense. Where a scheme is part of, or accompanied by, other arrangements that confer rights or benefits upon some or all of the members or creditors who are to be bound by the scheme, the class question must be answered by reference to all those arrangements taken as a whole: Snowden J in Re Stemcor Trade Finance Ltd [2016] BCC 194 at [17]-[18] and Re Baltic Exchange Ltd [2016] EWHC 3391 (Ch) at [13]-[21].

43. A meeting of a single class of Scheme Shareholders was convened by the Directions Order. In this case, I consider that the Scheme Shareholders, being the holders of all the ordinary shares, properly formed one class. They have the same rights going into the Scheme and the Scheme treats them in the same way. Nor, in a broader sense, are other rights or benefits being conferred on them because of the Scheme.

44. The givers of the irrevocable undertakings did not receive any consideration for giving the undertakings (other than the promise of Bidco to make the bid).

45. This a straightforward case where no class composition issues arise in the Scheme and the Directions Order convening a meeting of a single class of Scheme Shareholders was correct.

Sanction by the Court

46. A number of criteria which must be satisfied if a Court is to sanction a scheme and discretion is given to the Court. The functions of the Court are set out in the following extracts from Buckley on the Companies Acts on s. 899 of the Act [paragraphs [219]-[232] (footnotes omitted)]:

> "Once the meetings have approved the scheme, the sanction of the court must be sought. The sanction of the court is not a mere formality. Although the court has an unfettered discretion as to whether or not to sanction the scheme, it is likely to do so, as long as: (1) the provisions of the statute have been complied with; (2) the class was fairly represented by those who attended the meeting and that the statutory majority are acting bona fide and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and (3) the arrangement is such as an intelligent and honest man, a member of the class concerned and acting in respect of his interest might reasonably approve…
>
> The court does not sit merely to see that the majority are acting bona fide and thereupon to register the decision of the meeting. The court will decline to sanction the scheme if the class has not been properly convened and properly consulted, or the meeting has not considered the

matter with a view to the interests of the class which it is empowered to bind, or some blot is found in the scheme which had been unobserved when it had been approved by members or creditors, but will otherwise be slow to differ from the meeting."

47. This passage from Buckley (as adapted from time to time) has been cited and followed on numerous occasions. As David Richards J observed in Re Telewest Communications plc (No.2) [2005] 1 BCLC 772:

"[20] The classic formulation of the principles which guide the court in considering whether to sanction a scheme was set out by Plowman J in Re National Bank Ltd [1966] 1 WLR 819 at 829 by reference to a passage in Buckley on the Companies Acts (13th edn, 1957) p 409, which has been approved and applied by the courts on many subsequent occasions…

[21] This formulation in particular recognises and balances two important factors. First, in deciding to sanction a scheme under s 425, which has the effect of binding members or creditors who have voted against the scheme or abstained as well as those who voted in its favour, the court must be satisfied that it is a fair scheme. It must be a scheme that 'an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve'. That test also makes clear that the scheme proposed need not be the only fair scheme or even, in the court's view, the best scheme. Necessarily there may be reasonable differences of view on these issues.

[22] The second factor recognised by the above-cited passage is that in commercial matters members or creditors are much better judges of their own interests than the courts. Subject to the qualifications set out in the second paragraph, the court 'will be slow to differ from the meeting'."

48. The relevant questions for the court at the sanction hearing can be summarised as follows:

(1) Has there been compliance with the statutory requirements?

(2) Was the class fairly represented and did the majority act in a bona fide manner and for proper purposes when voting at the scheme meeting?

(3) Is the scheme one that an intelligent and honest person, acting in respect of their interests, might reasonably approve?

(4) Is there some "blot" (i.e. defect) in the scheme?

I shall refer to these as Requirements (1) to (4). However, I regard them in the manner described by Morgan J in Re TDG plc [2009] 1 BCLC 445 at [30]:

"It is also right to record that the court does not act as a rubber stamp simply to pass without question the view of the majority but, equally, if the four matters I have referred to are all demonstrated, the Court should show reluctance to differ from the views of the majority, and should certainly be slow to differ from the majority, on matters such as what an intelligent, honest person might reasonably think."

Requirement (1): satisfaction of statutory criteria

49. As set out above, a meeting of a single class of Scheme Shareholders was properly convened pursuant to s.896(1) of the Act. Due notice of the Court Meeting was given (notwithstanding the minor departures from the Directions Order, which I consider not to be material). The Scheme Document, containing the Explanatory Statement, satisfied the requirements of s.897. The statutory majorities under s.899(1) were obtained at the Court Meeting approving the Scheme.

50. The first requirement is therefore met.

Requirement (2): representation of the class concerned

51. The Scheme Shareholders were fairly represented. Matters regarding the Scheme were fully set out in the documentation. The turnout by number of shares voted was reasonably high (72.89%). The turnout by headcount (12.48%) is on the lower side. But there is no reason to suspect that there has been any failure in the communications process. Over 29% of the Scheme Shareholders are "gone aways". The Court Meeting was advertised in the Daily Telegraph and the Company's website has contained all information relevant to the Scheme, including the Scheme Document.

52. Furthermore, the nature of modern shareholdings in listed companies is such that the headcount element of the statutory majorities requires consideration in light of how shares are held. Many persons interested in shares hold their shares indirectly through nominees (e.g. in ISAs or other investment vehicles) and large numbers of beneficial holders' interests can be aggregated in the legal title of a single nominee. In the case of the Company, there is at least one significant nominee company, Rock (Nominees) Limited, which holds Scheme Shares for 619 beneficial accounts, of which 389 voted at the Court Meeting. Even so, Rock Nominees counted for only one Scheme Shareholder.

53. In addition, since the announcement of the proposed acquisition of the Company on 29 July 2021, there has been a change in the Company's share register, where merger-arbitrage hedge funds have acquired beneficial interests through prime brokers and those shares have not been voted.

54. I do not regard the low headcount as a reason not to sanction the Scheme.. In Re Uniq plc [2012] 1 BCLC 783 at [22], David Richards J noted:

> "While members holding over half the issued shares voted in favour of the scheme, the turnout by number was 14.8%, leaving 9,773 members who did not vote. The court is concerned to see that the class to be bound by the scheme was fairly represented at the meeting. Depending on the circumstances, a low turn-out in terms of value or number may be a matter of concern. It would certainly be a matter of concern if there were cogent evidence to the effect that a substantial number of members were opposed to the scheme but had not voted, particularly if their opportunity of doing so had been curtailed in some way. But … a failure to vote may indicate nothing more than indifference or a belief that other members would vote through the scheme."

55. In Re TDG plc [2009] 1 BCLC 445, Morgan J observed at [25]:

> "There has been speculation (and it can only be speculation) as to why people do not vote. I will not attempt an exhaustive list of the reasons why people do not vote; there are some obvious explanations. One is that, although the documents are served in accordance with the legal requirements, they do not in fact come to the attention of the shareholder. Another is that the shareholder receives a very substantial bundle of documents and does not feel ready and able to deal with it, and so does not deal with it within the time that is set. Other shareholders might feel able to deal with the matter, but in the end have no very pronounced preference and so they leave the decision to large shareholders in a company who it might be thought will have a very good commercial feel as to the appropriate decision. So such a shareholder leaving it to others to form a majority is not to be equated in any sense with an opponent of the scheme."

56. As regards the fact that a large number of votes cast at the Court Meeting were subject to the irrevocable undertakings and holders were contractually bound to vote in favour of the Scheme, this does not – in my judgment in this case – undermine the weight to be attributed to those votes. There is nothing to suggest that these shares were voted at the Court Meeting merely because of the contractual obligation to do so, against the then prevailing wishes of the holders of those shares. The bid premium on the shares was substantial. Even if those votes were entirely discounted, the statutory majorities would still have remained substantially similar (17,123,640 votes in favour and with 5,548 against i.e. 99.97% by value in favour, and a large majority in number).

57. There is nothing to suggest that any person voting in favour the Scheme was promoting interests adverse to those of the class of Scheme Shareholders, and I consider Requirement (2) to be met.

Requirement (3): the reasonable approval of the intelligent and honest person

58. Information relating to the Company and Bidco, and explaining the Scheme, the Scheme process and matters relevant to an assessment of the Scheme are set out extensively in the Scheme Document. The terms of the Scheme are set out in full.

59. The Scheme was unanimously recommended by the Company's Board, which considered the proposals to be fair and reasonable and in best interests of the Company and its shareholders as a whole. The Board were advised by Rothschilds on the financial terms of the offer in forming their opinion that the offer was fair and reasonable. The Board has not withdrawn its recommendation. There are no matters which have arisen since the Court Meeting which the Board considers would reasonably cause reliance on the vote at the Court Meeting to be queried.

60. The Court does, of course, have a wide discretion. But it has also frequently been emphasised that shareholders acting on full information are normally the best judge of their commercial interests and are best placed to decide where their interests lie: see the oft-cited formulation of Lindley LJ in Re English, Scottish and Australian Chartered Bank Limited [1893] 3 Ch 385 at 408-409.

Requirement (4): no blot on the Scheme

61. I can discern no blot on the Scheme. That is to say, there is no reason otherwise why the Court should not exercise its discretion. In Re The Co-Operative Bank plc [2017] EWHC 2269 (Ch) at [22], Snowden J explained the concept as referring to some technical or legal defect in the scheme, such as internal inconsistency or infringement of some mandatory legal provision.

Other matters

62. The Scheme Document contemplated that if the Scheme had not been sanctioned by 10 December 2021, a dividend of up to 4 pence per share would be payable to members on the register as 10 December 2021 without a corresponding reduction in the Scheme consideration. This is referred to in the Scheme Document and the Scheme as the Permitted Dividend. The Permitted Dividend of 4 pence per share was paid on 14 January 2022.

63. The Company published its interim results for the half year to 30 September 2021 on 18 November 2021. The Company's performance was in line with market expectations.

CONCLUSION

64. The jurisdictional requirements have been satisfied. There are no reasons meriting the Court refusing to exercise its discretion to sanction the Scheme. I am satisfied that the Scheme is a scheme that is a "scheme of arrangement" within the meaning of the Act which I can and should approve. I will make an order in the form of the draft before me.