



Neutral Citation Number: [2024] EWHC 836 (Ch)

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

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
FINANCIAL LIST (CH D)

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

Date: 28 March 2024

Before :

Mr Justice Leech

Between :

The Persons Identified in Schedule 1

- and -

Standard Chartered Plc

Claimant

Defendant

Adrian Beltrami KC (instructed by **Herbert Smith Freehills LLP**) for the **Claimant**
Shail Patel KC and **William Harman** (instructed by **Signature Litigation LLP**) for the
Defendant

Hearing dates: 27TH /28TH March 2024

APPROVED JUDGMENT

Mr Justice Leech
(10:33am)

Thursday, 28 March 2024

Judgment by **MR JUSTICE LEECH**

1. By Application Notice dated 26 February 2024 the Defendant, Standard Chartered PLC (the "**Bank**"), applied for an order that by 4.00 pm on 28 March 2024, the Claimants should serve on the Bank an amended version of their further particulars of standing (the "**FPOS**") certified by a statement of truth which:

"1.1. States separately for each Prospectus Claimant whether it advances a claim under s.90 of FSMA based on alleged direct participation in the Defendants' (i) 2008 rights issue, (ii) 2010 rights issue, and/or (iii) 2015 rights issue, specifying which rights issue(s) the Prospectus Claimant allegedly participated in.

1.2. States separately for each Prospectus Claimant whether it advances a claim under s.90 of FSMA based on allegedly having acquired securities in the secondary market, specifying which prospectus(es) the Prospectus Claimant's claim relates to."

2. The Bank also sought an order that unless they complied with these provisions their claims should be struck out. They also sought an order in the following terms again on an unless order basis:

"By 4.00 pm on 28 March 2024, any Claimant who has not already done so shall serve on the Defendant clean trading data in an intelligible form which identifies any purchase, sale or holding of the Defendant's shares (or interests therein) that are the subject of that Claimant's claim in these proceedings. The cleaned trading data served pursuant to this paragraph shall separately identify (by colour coding or other suitable means) the trades that are the subject matter of a claim under: (i) s.90 of FSMA; and (ii) s.90A of and Schedule 10A of FSMA."

3. On 8 February 2024 I heard a disclosure guidance application in this action and on 10 February 2024 I handed down a judgment dealing with a number of disclosure issues. On 27 March 2024 the resumed hearing took place. In my earlier judgment I had indicated that I would hear the FPOS Application (as I will call it) if there was sufficient time although I had anticipated that the resumed hearing would be listed on a much earlier date. When it came on for hearing yesterday I was initially concerned that I should not hear it because there is a second CMC listed before Michael Green J, who is the designated judge on 16 April 2024 and I considered it more appropriate that he should deal with what is essentially a case management issue. However, I heard full argument and I will therefore determine the application on the basis that I have

sufficient familiarity with the background and also that it will free up time for dealing with other, and perhaps, more important issues, at the CMC.

4. I turn therefore to the background to the FPOS Application. On 29 October 2020 the first Claim Form in this action was issued followed by three more on 17 September 2021, 18 August 2022 and 19 October 2022. In those Claim Forms 226 Claimants bring claims under section 90 and section 90A of FSMA. In the first Claim Form, which has been both amended and reamended, the Claimants assert that they have claims under section 90A and in particular, that they were at the material times holders of interests in securities issued by the Bank and suffered loss as a consequence of its failure to disclose certain misconduct and published information within the meaning of Schedule 10A. They also assert that they have claims under section 90 and in particular, that they acquired securities pursuant to the rights issues of the Bank in 2008, 2010 and 2015 and that they have suffered loss as a result of misleading statements in the prospectuses for each of those rights issues.
5. For the purposes of section 90, the Claimants have to prove that they acquired securities to which the listing particulars applied: see section 90(1)(a). For the purposes section 90A they have to approve they acquired, continued to hold or disposed of securities to which Schedule 10A applied. Each Claimant has therefore to establish that it had legal personality, a right to bring the claim and to prove that it bought, held and sold shares in the Bank and for section 90 purposes, either through the three rights issues or subsequently in the aftermarket. These are the particulars of standing or FPOS which are the subject matter of the FPOS Application. They are also the building blocks which form the basis for each Claimant's compensation claim.
6. Mr Adrian Beltrami KC, who appeared for the Bank, took me through the procedural history of the action and extracts from the correspondence. Unsurprisingly, the Bank's solicitors, Herbert Smith Freehills LLP (“**HSF**”), raised the question of standing at a very early stage and the Claimants’ solicitor, who were then Brown Rudnick LLP (“**Brown Rudnick**”), stated that they were preparing particulars of standing. On 1 April 2022 Brown Rudnick served responses to requests for further information in which they gave generic responses stating that it would not be necessary or proportionate or indeed helpful to provide detailed particulars but without prejudice to this, they then stated that they proposed to serve FPOS which would answer a request dealing with their legal personality, right to sue and the beneficial ownership of the shares. They also stated that they would provide trading data alongside the further particulars of quantum (the

“FPQ”), which provided details of shares which were bought, held and sold under each of the three rights issues. By letters dated 2 August 2022 and 16 June 2023 Brown Rudnick assured HSF that they were in the process of preparing the FPOS and would serve them by 28 July 2023. However, they had not done so by the hearing of the first CMC before Mr Justice Michael Green on 3 October 2023. At the hearing, therefore, the judge made an order in the following terms:

"By 4pm on 15 December 2023, the Claimants shall serve on the Defendant: 1.1. Particulars of Standing, certified by a statement of truth, which state all material facts and matters on which each Claimant relies to establish that it has standing to bring claims against the Defendant under s.90 and/or s.90A of the Financial Services Act 2000. 1.2. Trading data in relation to any purchase, sale or holding on the Defendant's securities (or interest therein) that are the subject of each Claimant's claim in these proceedings."

7. The judge also made an order that by 4.00 pm on 29 February 2024 the Claimants should serve their FPQ stating all material facts and matters on which each claimant relied in support of its case on quantum: see paragraph 3 of his order. The judge adopted the date and form of paragraph 1 of the order proposed by the Claimant's counsel. He addressed the Bank's concerns about the form of the order in his judgment at [101]:

"SC plc accepts this wording but wishes to add that the particulars in paragraph 1 should include the information that had been sought in a number of the requests in its original request for further information. Mr Chapman KC resisted this on the basis that SC plc would be getting much more than it would otherwise be entitled to by way of further information because underlying documentation supporting the particulars will also be provided. He said that this is what they have been collating and it's unnecessary to specify or seek to tie it to the original specific requests. I agree that SC plc's extra wording is unnecessary in the circumstances. If it remains unhappy with the adequacy of the particulars of standing, he can pursue that, possibly at the CMC. For now, I think that what the Claimants are offering is sufficient and that is what I shall order."

8. On 15 December 2023 the Claimants served a spreadsheet which sets out for each Claimant the nature of the legal entity, the jurisdiction of incorporation and the basis of its legal standing and whether it was the legal beneficial owner of the shares and, if it was the beneficial owner, the nature and source of its beneficial ownership. The spreadsheet also contains a narrative explanation of the documents which were relied on in support of this information. In relation to the claims themselves, the spreadsheet contains two columns which ask whether or not the claimant had at least one fund with a section 90 FSMA claim and one fund with a section 90A FSMA claim and in which a "yes" or "no" answer is given. For particulars of the shares and when

they were bought and sold the spreadsheet contains a column heading "trading data funds" with a statement against each claimant saying: "Please refer to sheet trading data and funds reps."

9. On 8 March 2024 Signature Litigation LLP ("**Signature**"), who now act for the Claimants, served the FPQ. The FPQ took the form of a second spreadsheet in which the total amount claimed by each Claimant was set out and then broken down into section 90A and section 90 claims. The section 90 claims were also broken down into three categories for each prospectuses, namely "premarket", "rights issue" or "aftermarket". Different measures for each Claimant were also given. The total value of the claims based on a weighted average was given as £1.4 billion. Signature also served trading data with both the FPOS and the FPQ.
10. In his witness statement dated 13 March 2024 Mr Rory Spillman, a partner in Signature, stated that the Claimants had served over 41,500 rows for over 200 Claimants in relation to 1,300 funds. He also explained that much of this data had been "cleaned" and what he meant by this. In summary, the Claimants' quantum experts had to input the relevant information into the spreadsheet and for this purpose he or she has had to take detailed instructions from each Claimant. Mr Spillman stated that 93 claimants had provided this information and 71 Claimants had provided some information but that the expert had had to make assumptions or what Mr Spillman described as "educated interpretation" to complete the spreadsheet. He also stated that there were 50 Claimants for whom the process was ongoing, although trading data had been generated for them. Finally, he stated that there were 11 Claimants for whom it had not been possible to provide trading data had not therefore done so.
11. By the end of the hearing it was common ground that 14 Claimants had not provided compliant FPOS for their section 90 claims of which one had been withdrawn and a second was continuing to be investigated. It was also common ground that there were 14 Claimants who had provided inconsistent FPOS and FPQ. 12 had stated that they had no section 90 claim at all in the FPOS but then asserted that they did have one in the FPQ. Two others did the reverse. Mr Shail Patel KC, who appeared for the Claimants, assured me that the accurate position was as set out in the FPQ. With that rather lengthy background I come to consider the submissions made by the parties.
12. Mr Beltrami for the Bank submitted that the Claimants had not complied with paragraph 1.1 of the Order because it was not sufficient simply to provide particulars of the legal entity bringing the claim and how it owned or held the relevant funds but then provide a "yes" or "no" answer to

questions "Do you have a section 90 claim?" and "Do you have a section 90A claim?" He accepted that most of the relevant information was now set out in the FPQ apart from those 26 (or perhaps 28) Claimants who had given inconsistent information or no information at all about their claims. He submitted that although this might be regarded as a "formatting issue" the purpose of the FPQ was different and the Bank and its legal team should not be required to spend time matching up the information from the different sources which had been provided. Mr Beltrami also submitted that apart from the 93 Claimants who provided clean trading data the Claimants had not complied with paragraph 1.2 of the Order either.

13. Mr Patel submitted that apart from a very few exceptions all of the 226 Claimants had now complied with the Order because they had provided particulars of all facts and matters upon which each one relied to prove standing. He told me that the FPOS spreadsheet was in a conventional form adopted in other securities litigation and it was disproportionate and unnecessary to require the Claimants to produce a further spreadsheet which contained the relevant information. He accepted, however, that this could be done before the second CMC if I made an order. He also submitted that apart from the 11 exceptions who had not provided trading data at all, all of the Claimants had now complied with the order and had provided trading data. He pointed out that paragraph 1.2 did not use the word "clean" and submitted that this had no accepted meaning. He also submitted that for the Court to embark on deciding what "clean" and "unclean" data means in this context would be an esoteric philosophical exercise.
14. I now set out my decision and my reasons for reaching it. I will order the Claimants to produce a new document which combines the information set out in the FPOS and the relevant information in the FPQ by 4.00 pm on Friday 12 April 2024. I will make this order for these reasons:
 - (1) Although the Claimants served the FPOS spreadsheet on 15 December 2023, it did not set out all material facts upon which each Claimant relies to establish that it was entitled to bring a claim under either section 90 or section 90A. Moreover, Mr Patel did not submit otherwise.
 - (2) Although Mr Patel submitted that this information could be found either in the FPOS spreadsheet or in the FPQ spreadsheet and the trading data, he did not provide me with any examples to make good this submission. I found it very difficult to try and undertake this exercise this morning with the spreadsheets and then to match up the FPOS with the trading

data. In practical terms therefore I am not satisfied that the claimants have complied with paragraph 1.1 of the Order.

- (3) Further, the Court would normally expect a party to comply with an order for the provision of further information or particulars by setting out the necessary information in a single document and in an intelligible form so that the Court can be satisfied that the Claimants have complied with it. That was the root of the problem yesterday. I cannot be satisfied that any individual Claimant had done so and Mr Patel did not set out to satisfy me that they had done or to give me any particular examples to satisfy me that they had. He simply submitted that it was disproportionate to require the Claimants to do it again. For this reason alone, therefore, I will order the Claimants to produce a document which contains all of the relevant information for each Claimant in a form from which the Court can be satisfied that each Claimant has complied with paragraph 1.1 of the Order.
- (4) The purpose of the FPOS is to enable the Bank but also the Court to be satisfied that the 226 Claimants have valid claims. Section 90 and 90A do not use the word "standing" and I was not taken to any authority in which the Court has determined authoritatively what particulars Claimants in Financial List securities litigation must provide and at what stage. But in my judgment this is a matter of case management for individual courts and judges rather than the application of a test supplied by FSMA or the Civil Procedure Rules and I approach the interpretation of Michael Green J's Order on that basis.
- (5) In my judgment, what Michael Green J required the Claimants to do in the Order was not only to provide particulars of their legal personality, the funds which they own or manage and their rights to sue on behalf of those funds but also particulars of the shares which were bought by the funds, for how long they were held and when they were sold. This is the basic information required by each claimant.
- (6) Moreover, this is not simply a matter of quantum as Mr Patel submitted. It is important that the Claimants should provide this information at an early stage for two reasons. First, it is important to ensure that individual Claimants engage with the process and at an early stage. As I pointed out in the course of argument yesterday, it is an abuse of process to bring a claim on behalf of the Claimant which has not given authority to do so or to sign a statement of truth on behalf of a Claimant which has not even turned its mind to the question of

whether it can satisfy the statutory criteria. The Court is entitled to be satisfied that both of those two things have taken place. An easy way to satisfy the Court on both issues is to serve prompt and full particulars of standing. Secondly, financial list litigation imposes a heavy burden on the Court as much as the parties and often at the expense of other court users. It is important, therefore, that the Court should be able to police its own process and make sure that its own orders have been complied with.

15. I turn now to the question of trading data. I will also order all of the Claimants (apart from the 93 who have provided clean trading data) to provide clean trading data within 56 days of this Order. What I mean by this is that each Claimant must provide particulars of all shares in the Bank which it bought and sold and which are the subject matter of its claim. By particulars, I mean at a minimum the date of purchase and sale, the number of shares and the sale or purchase price together with details of the individual trade (which I assume to be available). Again, I make this Order for the following reasons:

- (1) I am not satisfied that those Claimants who have not served clean trading data have complied with paragraph 1.2 of the Order. It is clear from Mr Spillman's evidence that "unclean trading data" served on behalf of the Claimants is a mixture of assumptions and educated guesses made by the Claimants' quantum experts and is not based on instructions from the individual claimants.
- (2) Indeed, it's not clear to me from Mr Spillman's evidence that Brown Rudnick or Signature have actually received instructions to serve trading data on behalf of the remaining Claimants in the form which they have. I make it clear, therefore, that what I mean by clean trading data is data based on each individual Claimant's instructions and evidence provided by that Claimant rather than assumptions made by an expert consultant or expert witness as part of the quantum exercise. The two are different.
- (3) The easiest way for Signature and their experts to satisfy themselves that the trading data is clean is to obtain express instructions from the individual Claimant that they are satisfied that the relevant information is correct and that they can serve the trading data in the proposed form. If they are unable to obtain those instructions, I will of course entertain an application for an extension of time but only on the basis that real attempts have been made

to obtain the relevant Claimant's instructions and that it is engaging with the litigation. If the Claimants do not engage, then an unless order may follow.

- (4) Finally, I do not consider this to be an excessive burden to place on the Claimants themselves. A number of authorities have made it clear that the ordinary rules of procedure are intended to apply to securities litigation of this kind and all that Michael Green J and I have ordered the Claimants to do is to provide the basic particulars, which any claimant would be ordered to provide if there were a single claim or even as many as ten claims in issue. It is only fair to match the kind of disclosure burden which securities litigation imposes on a Defendant with a similar burden on the Claimants.

16. In conclusion, therefore, I will make an order in the form of paragraph 1 of the draft Order annexed to the application notice substituting 12 April 2024 for the existing date. I will also make an Order in the form of paragraph 3 substituting 23 May 2024 for the existing date. I am not prepared to make an unless order at this stage, certainly not with the second CMC approaching. But unless orders may follow if the Claimants are not prepared to give proper instructions to their solicitors in relation to this litigation and on a prompt and timely basis.