Neutral Citation Number: [2024] EWHC 235 (Ch)

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

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: **12 January 2024**

Before :

Mr Justice Leech

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Between :

Allianz Funds Multi- Strategy Trust (on behalf of AllianzGI Best Styles Global Equity Fund) And Others	**Claimant**
- and –	
Barclays Bank PLC	**Respondent**

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Jonathan Nash KC, Alex Barden, and Carola Binney (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: **12th January 2024**

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APPROVED JUDGMENT

MR JUSTICE LEECH:

Introduction

1. This is the first case management conference in a claim against Barclays Bank plc ("**Barclays**") under section 90 and section 90A of FSMA 2000. On 20 November 2020 the first Claim Form was issued and on 4 March 2022 the second Claim Form was issued. The claims are brought by approximately 130 claimants representing approximately 550 funds or sub-funds. Although I have not been appointed the designated judge in relation to the claims on 2 August 2023 I heard the Claimants' application to amend the first Claim Form and the Particulars of Claim (the "**Naming Application**") and I handed down a reserved judgment: see [2023] EWHC 2015 (Ch).

2. In that judgment I set out the background to the claims and the procedural history to that point in time. It is therefore unnecessary for me to repeat any of that material in this short *extempore* judgment which I deliver part way through this CMC to deal (for the most part) with what I will call for convenience the "**pleading issues**" and "**split trial issues**". Once I have determined those issues, the parties will be in a position to make submissions about the timetable and any ancillary directions.

3. Since the Naming Application the Claimants have served generic Particulars of Reliance dated 24 November 2023. In their Skeleton Argument for the CMC on behalf of Barclays Ms Rosalind Phelps KC, Mr Michael Watkins and Mr Tom Foxton set out the procedural background to the service of those particulars. They point out that they put the Claimants on notice of the need to plead out their individual cases on reliance before proceedings had started and that they have been asking for Particulars of Reliance since 15 November 2021.

4. The Particulars of Reliance divide the Claimants into three categories. Category A consists of those Claimants who relied directly on the published information (as defined). Category B consists of those Claimants who relied on the relevant published information indirectly through a number of different conduits, including meetings with Barclays, its agents or advisers. Category C consists of those Claimants who relied on the status of Barclays in the market and its share price. This categorisation gives rise to a number of legal issues and, depending on the numbers in each category, it may be possible or necessary for the Court to resolve those issues at an early stage either on a strike-out application or on the hearing of a preliminary issue. Mr Jonathan Nash KC,

who appears with Mr Alex Barden and Ms Carola Binney for the Claimants, told me that the claimants intended to provide particulars of the number of the Claimants who fall into each category by 9 February 2024.

5. The Claimants had served particulars of standing by the hearing of the naming application but since then there has been a further exchange of pleadings (if I can put it like that) in the form of an Excel spreadsheet in which Barclays has responded to the original particulars and the Claimants have served replies. Ms Phelps told me that Barclays accepts that all of the currently pleaded Claimants are legal entities and that her team would shortly be in a position to serve a final round of responses in which they would be able either to admit the standing of each individual Claimant or ask for discrete information at a granular level designed to narrow the issues even further. To illustrate the kind of issue which remains outstanding she told me that the dispute about one particular Claimant was whether the account information given was accurate and related to the correct account.

6. On 10 January 2024 (which was the night before the first day of the hearing of the CMC) the Claimants served Particulars of Quantum. I was not taken to the document or able to understand the level of detail which it contained and Ms Phelps and her team were not in a position to make any submissions about these particulars or the way in which they might impact on the issues which I have to decide at this CMC. There is a measure of common ground, however, and for present purposes it is enough for me to record that the parties are agreed that there should be a split trial, and that at Trial 1 the Court should determine the "Barclays-facing issues" (as I will call them) which are numbered 1 to 18 in the agreed List of Issues. It is also agreed that there should be a second CMC, preferably in the summer term of this year, to determine all outstanding procedural issues or at least as many as are capable of resolution at that time.

7. With this short introduction, I turn to decide the pleading issues and the split trial issues for the purpose of this first CMC. I do so by reference to the draft order annexed to the Skeleton Argument of Mr Nash and Mr Barden (the "**Order**"), which sets out in black the agreed directions. It also sets out in red the proposed directions put forward by the Claimants and in green the proposed directions put forward by Barclays.

Paragraph 8: Reliance

8. This was the principal issue between the parties and it is significant because the order on this issue will have a knock-on effect on both sampling and timetable. Ms Phelps invited the court to make an order not only that the Claimants should provide a breakdown of the individual Claimants and funds which fall into each of the three categories (as they have agreed to do by 9 February 2024) but also that all of the Claimants should be required to answer the questionnaire in Annex 1 to the Order which I will call the "**Reliance Questionnaire**". She did not submit that the Claimants should be required to answer the Reliance Questionnaire by a particular date but submitted that they should do so in sufficient time before the second CMC to enable them to deal adequately with it when the CMC took place.

9. The Reliance Questionnaire is predominantly based on the questionnaire which Falk J (as she then was) ordered the claimants to answer in *Various Claimants v G4S Ltd* [2022] EWHC 1742 (Ch) and *Various Claimants v Serco Group plc* [2022] EWHC 2052 (Ch) (which she decided about a month after the *G4S* decision). The Reliance Questionnaire is a longer document than in either of those cases because of the separate categories of reliance. But if I order the Claimants to answer it only the Claimants who fall within more than one category will have to answer all of the questions or questions relating to more than one category.

10. Mr Nash accepted that in principle each Claimant could be required to answer the Reliance Questionnaire under CPR Part 18.2. He submitted, however, that it was neither reasonable nor proportionate to order them to do so at this stage because reliance issues should be dealt with at Trial 2 either exclusively or predominantly. He also submitted that it was not reasonable or proportionate to order all of the Claimants to answer the questionnaire now because the findings on trial 1 would narrow the issues and that even at Trial 2 the court would be deciding sample cases. He also emphasised that Barclays was not relying on the Reliance Questionnaire as a case management tool but in effect insisting that the Claimants should plead out their case now in accordance with the strict rules of pleading.

11. Ms Phelps submitted that there were sound case management reasons for ordering the claimants to answer the Reliance Questionnaire now. First, she submitted that it was necessary before the parties could undertake a sampling exercise and the Court could decide how to split the issues between Trial 1 and Trial 2. Secondly, she submitted that the failure to answer the questionnaire

would have an effect on overall timing and there would be a much longer delay between Trial 1 and Trial 2 if the Claimants had to begin from a standing start in pleading their case on reliance. But thirdly, and most importantly, she submitted that the Claimants should, as a matter of procedure, be required to answer the questionnaire. In particular, she submitted that for the vast majority of the Claimants who are bringing claims under section 90A, reliance was a necessary ingredient of their cause of action. She also submitted that the Claimants must have gone through an exercise to consider their reliance case in giving instructions to commence their claims and providing particulars of standing. Fourthly, and finally, she pointed out that the Particulars of Claim contained wide or sweeping reservations of rights and the Claimants should be forced to bring their whole case forward now.

12. Ms Phelps drew my attention to the observations of Lord Justice Lewison giving the judgment of the court in *Prudential Assurance Co Ltd v HMRC* [2017] 1 All ER 815 that it would be unacceptable in ordinary litigation to dispense with rules of pleadings before a trial and that group litigation should be no different: see [12] to [16]. She pointed out that this must be the position, especially where there is no GLO and the court has not formally dispensed with the requirements of pleading. In *Manning and Napier Fund Inc v Tesco plc* [2017] EWHC 3296 (Ch) Hildyard J adopted the same approach: see [29]. Finally, Falk J adopted a very similar approach in *G4S*. She considered that the Claimants would be required to answer the questionnaire because it was relevant to sampling. But she also stated at [36] that: "it is also relevant to the proper particularisation of the reliance case, so that the defendant can understand the parameters of the factual and legal issues to be addressed." She also observed at [38] that it would promote settlement. In *Serco* she returned to this issue. Building on the judgment in *G4S* Serco had submitted that the Claimants should not only answer the questionnaire but give disclosure and make witness statements before sampling. She rejected this submission and stated as follows at [25]:

> "I am not persuaded by Serco's arguments. The process set in G4S was carefully designed as a proportionate means of ensuring proper particularisation of the claimants' reliance case before trial 1, to facilitate the selection of the optimum range of claimants as sample claimants, to achieve balance in the litigation burden before trial 1, including by ensuring proper engagement by claimants, to promote the chances of overall settlement through an improved understanding by the defendant of the claimants' case, and, with disclosure and, potentially, witness statements from sample claimants at least, to allow the case to progress from trial 1 to trial 2 without undue delay."

13. In reply, Mr Nash submitted that it was not necessary to require the Claimants to answer the Reliance Questionnaire to achieve these objectives but instead proposed that a sample group of 65 funds should answer a slimmed down version of the questionnaire modelled on the version which had already been served in *Various Claimants v Standard Chartered PLC* [2023] EWHC 2756 (Ch). In that case it was unnecessary for Michael Green J to decide the issue with which I am now faced because a questionnaire had been served and the Claimants accepted that they would all have to answer it. However, the judge commented on that agreement at [86]. He stated this: "At this stage, it is recognised that the Claimants must give more information about their individual reliance claims, but the context is that this is so that the sampling process can begin."

14. I accept the general proposition that the Claimants ought to be required to plead out their individual cases on reliance as a matter of general procedure. But the critical question remains one of timing: when? It seems to me that the answer to this question is a case management decision and that it involves an imperfect balancing exercise. In an ideal world, all of the Claimants would be required to plead out their case in full now. Moreover, this would be a salutary exercise designed to compel the Claimants and their funders to engage with the litigation and commit time and internal resources to it. As Falk J indicated in *G4S* it would also promote settlement by shaking out those cases which are clearly hopeless or where the individual Claimants are simply along for the ride. To use the phrase which I used in argument, it will keep the Claimants (and, perhaps more importantly, their funders) honest.

15. On the other hand, it is not in the interests of all parties to delay Trial 1 whilst all of the Claimants carry out this exercise although (as Falk J pointed out in both *G4S* and *Serco*) it may speed up trial 2. It is not in their interests either to inflate the costs of this litigation or to impose an unmanageable burden on the Claimants however much Barclays or its legal team may see this as a litigation strategy. Finally, it is not in the interests of either party to engage in a series of satellite applications designed to enforce compliance with an unrealistic order which holds up the orderly progress of the trial.

16. In my judgment, the realistic choice for the Court in the present case is either to cast the net very wide and require all of the Claimants to answer a slimmed down version of the questionnaire (as in *Standard Chartered*) or a sufficient proportion of them to enable the sampling exercise to be undertaken. The alternative is to focus on a smaller group of Claimants selected on the basis of

imperfect information and require them to answer the Reliance Questionnaire in full, or to combine both positions.

17. I therefore propose to adopt a middle way and to order the following. The Claimants and Barclays will each select 10 funds who will be required to answer the Reliance Questionnaire in full by 31 May 2024. The Claimants and Barclays will also select a further 40 funds who will be required to answer a slimmed down version of the Questionnaire by 31 May 2024. In relation to those 80 claimants, I also give the following directions:

    (1) Within 14 days of today's date the Claimants' legal team will provide a draft of the questionnaire which they propose to require the individual funds to answer using the *Standard Chartered* questionnaire as a template. I will call this the "**Reliance Questionnaire Lite**".

    (2) On 9 February 2024 the Claimants will serve their breakdown of the three categories of Claimants and whether they fall within categories A, B and C together with a list of the 10 funds and 40 funds to whom they propose to submit the Reliance Questionnaire and the Reliance Questionnaire Lite.

    (3) Within 28 days thereafter Barclays will serve its list of the 10 funds and 40 funds to whom they propose to submit the Reliance Questionnaire and the Reliance Questionnaire Lite together with any amendments to the Reliance Questionnaire Lite.

    (4) If the parties are unable to agree the form of the Reliance Questionnaire Lite within 14 days thereafter, I will decide its form on paper. Both parties must submit their proposed draft within seven days of the expiry of the 14 day period together with short submissions limited to 10 pages each.

    (5) The second CMC will be fixed for the first open date after 1 July 2024 to give some slippage both for the service of the answers to the Reliance Questionnaire and the Reliance Questionnaire Lite and the determination of its form.

18. I have decided to depart from the general approach adopted by Mr Justice Hildyard in Tesco and Mrs Justice Falk in both *G4S* and *Serco* for the following reasons:

(1) As Mr Nash submitted, the Claimant Universe (to coin a phrase which I adopted in my judgment on the Naming Application and which I took from him) is larger than the claims groups in each of those cases.

(2) I also accept Mr Nash's submission that it will take at least six months for all the claimants to answer the reliance questionnaire, and probably longer. In my judgment, compliance with the directions which I have just given will involve a serious level of engagement by the Claimants and their legal team. In any event, I do not consider it at all manageable to require the Claimants to answer the Reliance Questionnaire by the end of the summer term. Although the delay in providing this information may be their fault, I am not prepared to make an order with which parties cannot comply. At the end of the day, we are where we are.

(3) I am not satisfied that it is necessary to order all of the Claimants to complete the Reliance Questionnaire in order to conduct the sampling process. Ms Phelps and her team will have the breakdown of categories, the quantum of the individual claims and sufficient account information about the way in which they were held (and by whom) from the Particulars of Standing to choose their original sample of 50 funds. This information may be imperfect but it will still allow them to make a reasonably informed decision.

(4) Further, the whole issue of sampling can be reconsidered at the second CMC. The parties will be informed by the result of the first sample. This may enable them to streamline the sampling process by directing the Reliance Questionnaire or the Reliance Questionnaire Lite to a limited category of additional Claimants. I have in mind here that if the original sample does not capture a wide enough spread of sample cases to cover all of the necessary fact patterns, the parties and the Court can adopt a more targeted approach to identify samples to cover the missing categories or sub-categories.

(5) I am satisfied that the sample process which I have just directed will keep the Claimants honest (to use my shorthand expression) and achieve the required level of engagement from the Claimants without imposing a disproportionate burden upon them. But in any event, a second CMC in early July of this year would still provide sufficient time to order all of the Claimants to answer the Reliance Questionnaire before a trial in 2026 (if I were satisfied that this were absolutely necessary).

Paragraphs 9 to 11: Standing

19. Ms Phelps accepts that the Court should order the defendants to file and serve a response to the further Particulars of Standing by 26 January 2024. She also accepts that the Claimants should have eight weeks to serve replies. The current proposal is that Barclays should have four weeks to respond to those replies. In my judgment, it is appropriate to make an order in relation to standing and I will give the directions in paragraphs 9 to 11 of the Order (subject to any reformulation of the precise wording to be put forward by Mr Nash and considered by Ms Phelps this morning).

Paragraph 12 to 14: Limitation

20. Ms Phelps originally asked the court to give permission to amend the Defence in the form provided in draft and to make consequential directions. However, in the course of argument she did not press that application and I make no order in relation to those paragraphs. It also became clear in the course of the oral exchanges between us that any dispute in relation to section 32 of the Limitation Act 1980 might give rise to Barclays-facing issues which might potentially have to be dealt with at Trial 1. I therefore indicate that the Court would not expect the pleading out of the limitation issues to derail the timetable which I am about to set, and also that the Court will be in a better position to decide the extent to which the limitation issues overlap with the issues to be decided at Trial 1 at the second CMC. But I say no more at this stage, other than to record that Barclays should not be taken to have made and withdrawn an application to amend to plead a limitation and defence and that it remains open to Barclays to apply to amend on usual principles.

Paragraphs 5, 17 and 18: Split Trial and Sampling

21. In my judgment, it is only appropriate to order at this stage that Issues 1 to 18 should be tried at Trial 1. I will consider whether Issue 19 (standing), Issues 20 to 26 (reliance and causation) and Issue 29 (limitation) will be tried at Trial 1 at the second CMC, in the light of the first sampling exercise and the parties' position on limitation. I will also make an order that Issues 20 to 29 shall be determined in the first instance by reference to a sample of Claimants and funds: see paragraph 17. Ms Phelps did not really resist such a direction in relation to the reliance issues. I will also order the parties to use their best endeavours to try to agree the sample Claimants, but, more importantly, the relevant criteria: see paragraph 18. However, I recognise that this is likely to be the subject of more detailed debate at the second CMC and I will not make a prescriptive order in relation to the relevant criteria at this stage. I will not therefore include the text in green beneath

paragraph 18 of the Order. But I expect to set out the relevant criteria in any order which I make at the second CMC if the parties have not been able to agree the sample Claimants from the first tranche of replies to the Reliance Questionnaire and the Reliance Questionnaire Lite.

The Claim Form: The Ammundi Funds

22. Following my judgment on the Naming Application, the Claimants applied to add the Amundi Funds as Claimants 13B to 13F in respect of five separate funds. In my judgment I originally refused to permit an earlier amendment on the basis that a change in the name of the legal entity who held the relevant shares from Amundi Luxembourg SA to Amundi Funds would have been permissible because it amounted to no more than a change of name based on a mistake as to the legal entity which held the shares. But I also held that the changes in the legal personality and the names of the funds themselves amounted to a change in the essential description of the claim.

23. Yesterday, Mr Barden applied on behalf of Amundi Funds to re-amend on the basis that Barclays had originally conceded jurisdiction. Very fairly, Mr Barden did not oppose Barclays withdrawing their concession given the analysis which I had adopted in the judgment. But equally fairly, Mr Watkins did not actively argue that I should stand by my decision and adopted a neutral stance. In my judgment, it is appropriate to grant permission to amend to add Claimants 13B to 13F and to make the amendments set out in the table under paragraph 5 of Ms Hogan's fourth witness statement dated 21 December 2023. I can state my reasons very briefly.

24. As I have already stated, I would have found that there was jurisdiction to amend the name of the legal entity which held the shares. As Mr Barden pointed out, I granted permission to do so in relation to a number of other categories. But he also submitted that the changes in the name of the underlying funds were of a similar order. They involved either straightforward changes in the name of a fund or the change in the name of a fund as it was merged into another fund and sometimes a change in the name of the fund due to a change of legal personality. For example, Pioneer Funds Global Select involved a number of different changes. It involved a straightforward name change to begin with. But it also involved a further name change brought about by a merger with another fund and a change of the holding entity from an FCP to a SICAV.

25. I originally took the view that changes in the name of the fund of this order (brought about by changes in legal personality) involved a change in the essential description of the claim: see [117]. In particular, I held that these changes fell into the same category as Mann J's "wrong entity"

category in *G4S*. But Mr Barden has persuaded me that this categorisation was incorrect. In *G4S* Mann J was considering cases where the original description in the Claim Form involved the wrong fund altogether (i.e. a fund which did not own the shares) and not changes to the name of the fund which always owned the shares (either brought about by a change of name or by a merger with another fund). Mr Barden submitted, and I accept, that at all times the five funds held the relevant shares, and it was possible to identify those funds even though the names had changed or were incorrect. He also submitted that if I had been satisfied on jurisdiction, I would have exercised my discretion to permit the amendment. I agree, and I will therefore grant permission to make the amendments. For these reasons, therefore, I make the directions which I have indicated in this judgment and I grant permission to add Claimants 13B to 13F.