Neutral Citation Number: 2016 EWHC 207 (Ch)

Case No: HC-2013-000459

**IN THE HIGH COURT OF JUSTICE**
**CHANCERY DIVISION**
**COMPANIES COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednedsay 27th January 2016

**Before** :

**THE CHANCELLOR OF THE HIGH COURT**
**(Sir Terence Etherton)**

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**Between :**

| | |
|---|---|
| **PROPERTY ALLIANCE GROUP LIMITED** | **Claimant** |
| **- and -** | |
| **ROYAL BANK OF SCOTLAND PLC** | **Defendant** |

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**MR TIM LORD QC and MR KYLE LAWSON** (instructed by **Cooke, Young & Keidan LLP**) for the **Claimant**

**MR DAVID FOXTON QC and MR ADAM SHER** (instructed by **Dentons UKMEA LLP**) for the for the **Defendant**

Hearing dates: Wednesday 27th January 2016

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**JUDGMENT**
**(As Approved)**

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**The Chancellor of The High Court (Sir Terence Etherton):**

1. This is an application by the defendant, the Royal Bank of Scotland Plc ("RBS"), for an order transferring these proceedings into the Financial List. It is opposed by the claimant, Property Alliance Group Limited ("PAG").

The genesis of the Financial List

2. The Financial List came into effect on 1 October 2015. It is a specialist cross-jurisdictional list in that the judges of it are drawn both from the Commercial Court of the Queen's Bench Division and from the Chancery Division.

3. Lord Thomas of Cwmgiedd CJ gave notice of the intention to create the Financial List in his speech at the dinner at the Mansion House on 8 July 2015. In that speech he said as follows:

> "Thanks to the commitment and expertise of the judges of the Commercial Court and the Chancery Division, we are now ready to introduce a Financial List. This will be a specialist list for financial claims of £50 million or more, or cases that raise issues concerning the domestic and international financial markets, the equity, derivatives, FX and commodities markets. It will include provision for an innovative test case procedure, the aim of which will be to facilitate the resolution of market issues on which there is no previous authoritative English precedent.
>
> Why introduce such a new list? There are a number of reasons. First, it will promote access to the courts and the expertise of trial judges, for market actors in an area that is of significant importance both to the development of the domestic economy and to open the markets internationally.
>
> Secondly, and particularly through the test case procedure, the Financial List will help to avoid costly and time-consuming litigation through providing a mechanism for authoritative guidance before disputes have arisen. It thus helps to provide the necessary environment identified by Adam Smith for economic activity to thrive.
>
> Thirdly - flowing from the first and second points - I hope that this initiative will promote the rule of law both nationally and internationally. At the national level it does so for the reasons I have already outlined. At the international level it does so through acting as a beacon. The courts and the judiciary of this jurisdiction are widely respected throughout the world, for their expertise, knowledge of the markets, their incorruptibility and their independence.


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> The new Financial List - embodying these virtues - will set an international benchmark. The new List will not only encourage international litigants to continue to use our courts, the principles they embody and their jurisprudence, but in doing so they will help to raise standards. Setting the bar high here will help to raise the bar across the world."

The practice and procedures of the Financial List

4. Financial List claims are governed by CPR Part 63A, Practice Direction 63AA and the Guide to the Financial List ("the Guide"). The introductory section of the Guide sets out in general terms the ethos of the List and says as follows (so far as relevant):

> "1.1 …. The Financial List is a specialist list set up to handle claims related to the financial markets. It is situated in the Rolls Building in London and operates as a joint initiative involving the Chancery Division and the Commercial Court.
>
> 1.2 The objective of the Financial List is to ensure that cases which would benefit from being heard by judges with particular expertise in the financial markets or which raise issues of general importance to the financial markets are dealt with by judges with suitable expertise and experience.
>
> 1.3 Cases in the Financial List will be managed and heard by specialist judges so as to provide fast, efficient and high quality dispute resolution of claims related to the financial markets."

5. The meaning of "Financial List claim" is set out in CPR 63A.1(2) and (3) as follows:

> "(2) In this Part and Practice Direction 63AA, 'Financial List claim' means any claim which –
>
> (a) principally relates to loans, project finance, banking transactions, derivatives and complex financial products, financial benchmark, capital or currency controls, bank guarantees, bonds, debt securities, private equity deals, hedge fund disputes, sovereign debt, or clearing and settlement, and is for more that £50 million or equivalent;


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(b) requires particular expertise in the financial markets; or

(c) raises issues of general importance to the financial markets.

(3) 'Financial markets' for these purposes include the fixed income markets (covering repos, bonds, credit derivatives, debt securities and commercial paper generally), the equity markets, the derivatives markets, the loan markets, the foreign currency markets, and the common markets)."

6. That definition of the meaning of "Financial List claim" is the subject of commentary in the Guide as follows (so far as relevant):

"2.2 CPR Part 63A defines the kinds of claims which may be brought in the Financial List. The definition involves three related but independent criteria. The first criterion relates to the subject matter of the claim as set out in rule 63A.1(2)(a). The defined subject matter is widely drawn but is subject to a requirement that the claim be for more than £50 million or equivalent. Even where that requirement is met the Financial List is not suitable for straightforward claims which require no financial market expertise and such claims may be transferred out of the Financial List under CPR Part 30. The second criterion as set out in rule 63A.1(2)(b) is that the case requires particular expertise in the financial markets (as defined). The third criterion as set out in rule 64A.1(2)(c) is that the case raises issues of general importance to the financial markets (as defined). An example of the application of the second or third criterion could be to a case which relates to the defined subject matter but has a value lower than £50 million. If that case requires financial market expertise or raises issues of general market importance, it will be suitable for the Financial List…."

7. Paragraphs 2.1, 3.1, 3.2 and 6.1 of the Guide provide that cases will be dealt with by judges in the Financial List as follows:

"2.1 Claims in the Financial List may be commenced in the Commercial Court or the Chancery Division but the Financial List itself operates as a single list. The Chancellor of the High Court and the judge in charge of the Commercial Court have joint overall responsibility for the Financial List.


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…

3.1 Cases in the Financial List will be dealt with by specialist Financial List judges. Financial List judges are judges of the Chancery Division and the Commercial Court who have been authorised as such to hear and determine claims in the Financial List.

3.2 Case management in the Financial List will be carried out by judges. That applies to claims issued in the Chancery Division as well as the Commercial Court.

6.1 Proceedings in the Financial List will have a designated judge assigned to them at the time of the first case management conference. The designated judge will normally deal with all subsequent pre-trial case management conferences and other hearings. Normally, all applications in the case, other than applications for interim payment, will be determined by the designated judge and he or she will be the trial judge."

Transfers into the Financial List

8. Practice Direction 63AA contains the following provisions concerning the transfer of proceedings to or from the Financial List:

"4.1 Rule 30.5 applies to the Financial List as a specialist list and applications for the transfer of proceedings to or from the Financial List must be made to a Financial List judge.

4.2 If an application is made to a judge other than a Financial List judge to transfer proceedings to the Financial List, the other judge may –

(a) adjourn the application to be heard by a Financial List judge; or

(b) dismiss the application.

4.3 If a Financial List judge orders proceedings to be transferred to the Financial List, that judge –

(a) will order them to be transferred to the Royal Courts of Justice; and


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(b) may give case management directions.

4.4 A party applying to a Financial List judge to transfer a claim to the Financial List must give notice of the application to the court in which the claim is proceeding, and the Financial List judge will not make an order for transfer until satisfied that such notice has been given.

4.5 An application by a defendant, including a Part 20 defendant, for an order transferring proceedings from the Financial List should be made promptly and normally not later than the first case management conference.

4.6 In considering whether to transfer a claim to or from the Financial List and in addition to the criteria set out in rule 30.3 the court may have regard to the Guide to the Financial List."

9. CPR 30.3, to which reference is made in paragraph 4.6 of PD63AA, provides that various matters should be taken into account by the court when considering whether to make an order for the transfer of proceedings. These include: (a) the financial value of the claim; (b) whether it would be more convenient or fair for hearings, including the trial, to be held in some other court; (c) the availability of a judge specialising in the type of claim in question; (d) whether the facts, legal issues, remedies or procedures involved are simple or complex; (e) the importance of the outcome of the claim to the public in general; and (f) the facilities available to the court at which the claim is being dealt with.

10. In deciding whether or not to transfer a case into a specialist list, including in the Financial List, regard must, of course, be had to the overriding objective in CPR Part 1.

The issues in the proceedings

11. Against the background of those provisions and considerations, I turn to consider the matters in issue in these proceedings. PAG carries on the business of property investment and development, particularly in the north west of England. In these proceedings it makes various claims arising out of its banking relationship with RBS. The claims can be divided into the following groups: (1) the mis-selling of four interest rate swaps; (2) the transfer of the management of PAG's banking affairs and relationship to RBS's "Global Restructuring Group" ("GRG"), and the conduct of GRG in relation to PAG's business; and (3) the improper conduct of RBS in relation to the fixing of LIBOR rates. I will address each group in turn.

12. The four swap contracts were entered into in October 2004, September 2007, January 2008 and April 2008. The amended particulars of claim allege that, in the course of recommending and selling the swaps to PAG, RBS made a number of express and implied misrepresentations. It is alleged that various of


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the misrepresentations were fraudulent or negligent and that RBS was in breach of duty of care to ensure that the various statements were true. PAG claims that, in the light of those misrepresentations, the swaps were and are liable to be rescinded and PAG is entitled to damages.

13. It is further alleged that the sale and recommendation of the swaps to PAG, and RBS's encouragement to enter into the swaps, were in breach of various implied terms in an alleged "Customer Agreement".

14. It is alleged that, by reason of RBS's breaches of the Customer Agreement, PAG suffered loss and damage, including: (a) all the net sums paid in the swaps, totalling £4,919,370.67; (b) all sums paid on termination of the swaps on about 7 June 2011, totalling £8,261,000; and (c) interest paid on a loan taken to finance the termination costs, totalling £750,506.67. PAG claims other losses and damages, including those arising from its inability to use those funds further to invest in its property portfolio, thereby creating further income and profits; and from the fact that the swaps and the contingent liabilities they created, and PAG's consequent inability to attract new investors, prevented PAG from obtaining finance, weakened PAG's funding flexibility, prevented PAG from funding its share of attractive joint venture investments, and forced PAG to preserve substantial amounts of cash which would otherwise have been used in PAG's business. It is said that the best particulars that PAG can presently give concerning the damages claimed, in addition to the specific sums, are that they are in the region of £15 million. Accordingly, leaving aside questions of interest, PAG's total claim is for approximately £29 million.

15. I turn next to the issue of the transfer of the management of PAG's banking affairs and relationship to GRG. Complaint is made that, in breach of the alleged Customer Agreement, RBS transferred the management of PAG's banking affairs relationship to GRG at a time when PAG's business was not in distress and was not in breach of covenant under its facilities with RBS; that RBS engineered or constructed the breaches of covenant or risks it alleged solely in order to transfer the management of PAG's banking affairs and relationship to GRG so as to make business and commercial dealings as difficult as possible for PAG, to extract more revenue and value out of PAG, including by imposing fees and higher lending costs and taking an equity stake of profit-sharing in PAG's business, and to stifle PAG's complaints about the swaps, rather than in any real sense to turn around or restructure the business. Further breaches of the Customer Agreement are alleged in connection with GRG's involvement, but it is not necessary to set them out.

16. In support of those allegations about the transfer to and management of PAG's banking affairs by GRG, reliance is placed on a government investigation by Lawrence Tomlinson, acting under the auspices of the Department for Business, Innovation and Skills, published on 25 November 2013. It is said that the investigation was prompted by serious concerns about the strategies of RBS and other banks for improving their financial performance and the impact of those strategies on good and viable businesses, and that it was based on evidence received from businesses, whistle-blowers within banks, experts and lawyers working in the field.


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17. I turn to the third matter which is at the heart of these proceedings, namely, the alleged conduct of RBS in relation to the fixing of LIBOR rates. It is alleged that RBS made various misrepresentations concerning LIBOR in relation to the swaps, under which RBS's or PAG's obligations were set by reference to three months LIBOR. Reliance is placed on various financial penalties imposed on RBS by regulators for the rigging of LIBOR and other interest rates. PAG alleges that, from at least August 2007, RBS engaged in the actual or attempted manipulation of LIBOR rates, including the GBP LIBOR rates. It is alleged that RBS made the LIBOR representations fraudulently, in that RBS knew that the LIBOR representations were false or had no belief in their truth or was reckless in whether or not they were true. Alternatively, it is alleged that RBS was careless in making the LIBOR misrepresentations and was in breach of duty to take reasonable care that the representations were true.

18. It is also alleged that RBS was in breach of an implied warranty that the LIBOR representations were true and that RBS had reasonable grounds for believing that the LIBOR representations were true. It is further alleged that RBS was in breach of various implied terms of the alleged Customer Agreement in relation to the floating rates payable by or to RBS under each of the swaps calculated by reference to LIBOR.

19. It is alleged that each of the swaps was and is liable to be rescinded by reason of the LIBOR misrepresentations and that PAG is entitled to, and claims, restitution for all net sums paid under the swaps, all sums paid upon determination of the swaps, and damages and interest.

20. The amended defence runs to 172 pages (excluding substantial schedules) and 268 paragraphs. Among many points, the following are to be noted in connection with this application.

21. It is said that there was no Customer Agreement, as alleged, but there were pre-MiFID terms of business, and, from 1 November 2007, MiFID terms of business.

22. The amended defence recites in great detail discussions which allegedly took place from 2002 in relation to PAG's banking requirements, including in particular discussions between PAG and RBS leading to the first swap; discussions about hedging in 2006 and 2007, leading to the second swap; discussions about swaps in 2007 and 2008; discussions relating to the third and fourth swaps; discussions about a possible restructuring of PAG's position and the move to GRG; discussions concerning complaints relating to the swaps; and the negotiation of a new facility in 2011, the terms of which were finally contained in a facility agreement dated 8 July 2011 ("the 2011 facility").

23. In the amended defence reliance is placed by RBS on the pre-MiFID terms of business, including provisions that RBS would not provide advisory services; PAG undertook to obtain independent advice; no representation was made or warranty given or liability accepted as to the completeness or the accuracy of any information relating to trades; RBS did not act as PAG's adviser in a


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fiduciary capacity; RBS provided PAG with an execution only service, and not an advisory service; except to the extent that the same resulted from RBS's gross negligence or fraud, RBS would not be liable for, among other specified things, loss resulting from any act or omission made under or in relation to or in connection with its terms of business or the business or service provided.

24. It is alleged that PAG was in fact advised by independent advisers in relation to all the swaps.

25. It is alleged that PAG is contractually estopped from resiling from the representations inherent in the contractually agreed basis of dealing, as well as the contractual representations contained within the schedule to the ISDA Master Agreement and each of the confirmations following each of the swaps, namely that PAG made its own independent decision to enter into each of the swaps based upon its own judgment and upon such advice from its advisers as it deemed necessary, and had not relied upon any communication of RBS as investment advice or a recommendation to enter into the transaction, and PAG was capable of understanding and assessing the terms, conditions, merits and risks of the swaps, and RBS did not act as a fiduciary or adviser to PAG.

26. It is denied that RBS had any legal obligation to inform PAG that, after entering into each of the swaps, RBS would take steps to hedge its market exposure and did so and, as a bank operating in the wholesale markets, was able to hedge the exposure to market risk at more favourable rates than PAG would have done and that there was a difference between the RBS's costs and the value of the trade. It is said that PAG's alleged course of action in respect of the first swap is barred by limitation.

27. It is alleged in the defence that the 2011 facility was entered into by RBS as a result of an agreement or representation or promise by PAG, or on the basis of a common understanding, that, if RBS agreed to lend PAG the money required to pay the break costs of the swaps, PAG would not pursue either complaints or litigation against RBS in connection with the swaps.

28. It is denied that the word "hedge" has the meaning attributed to it by PAG in its particulars of claim. It is denied that the use of the word "hedge" constituted a statement of fact or constituted a misrepresentation.

29. It is denied that it was ever suggested, whether explicitly or impliedly, that RBS' credit department required the swaps or any other particular hedging transaction to be entered into. Whilst some of the facilities required hedging acceptable to RBS to be in place, how that hedging was to be structured and whether any specific transaction was entered into was a matter for PAG itself, save that RBS retained the right to indicate where it did not consider such hedging to be acceptable to it. It is admitted that RBS had stated had hedging, as opposed to swaps, would be required under the terms of some of the facilities.

30. It is alleged that PAG cannot now rescind the swaps because it has affirmed them by, among other things, taking various specified steps after it was aware


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of the alleged falsity of the alleged representations, and having taken legal advice.

31. It is denied that there was a Customer Agreement, as alleged, or that the implied terms relied upon formed part of either such an agreement or any contract which actually regulated the relationship between PAG and RBS.

32. Turning to the LIBOR allegations, it is said that PAG has misunderstood the nature and content of the British Bankers' Association ("the BBA") definition of LIBOR. It is denied that RBS made any of the implied LIBOR representations alleged in the amended particulars of claim; and in any event, RBS relies upon the contractual basis of its dealing with PAG which precludes the alleged representations.

33. The amended defence makes a distinction between what it refers to as "lowballing", being an actual or attempted manipulation of LIBOR in the form of requests by traders improperly to influence LIBOR submissions (which is called in the defence "trader manipulation"), and what the amended defence calls "financial crisis dislocation". RBS denies that any regulatory findings extended to PAG's involvement in GBP LIBOR. It is denied that "financial crisis dislocation" meant that LIBOR was being set other than in accordance with the BBA definition. RBS denies any involvement by its employees (or those of its affiliates) in actual or attempted manipulation of LIBOR in the form of "lowballing".

34. It is alleged that PAG's case in relation to many of the LIBOR allegations appears to be based entirely upon a number of misunderstandings as to the nature and content of the BBA definition of LIBOR.

Discussion

35. There can be no doubt, as indeed is recognised by Mr Timothy Lord QC, who appears for PAG on this application, that even though the value of the claim is less than £50 million the proceedings do fall within the definition of "Financial List claim" in CPR Part 63A. Mr Lord makes that concession, not on the basis that CPR 63A.1(2)(b) is satisfied, but on the basis of CPR 63A.1(2)(c).

36. It is likely to be rare for an application to transfer a claim into the Financial List, which satisfies the definition of "Financial List claim" in CPR 63A.1, to be resisted, especially where it falls within CPR 63A.1(2)(b) or (c). The extent of the past involvement of Birss J, to whom the case has previously been assigned (or "docketed"), however, makes this an unusual case. An order for transfer into the Financial List would mean that the case would have to be assigned to another judge because Birss J is not presently a judge of the Financial List. The following is an outline of Birss J's past involvement.

37. The proceedings were commenced in the Chancery Division on 17 September 2013. The parties requested that the proceedings be assigned to a judge to deal with all the interlocutory matters and the trial. Following a case management conference ("CMC") before Birss J on 24 November 2014, I


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appointed Birss J on that day to be the assigned judge. Birss J has dealt with several applications and hearings, and has delivered a number of judgments over the past 15 months.

38. He delivered a judgment arising from the first CMC concerning the scope of LIBOR disclosure. There was a hearing on 11 February 2015 also concerning disclosure, leading to two judgments by Birss J, both of which are to be found on BAILII: [2015] EWHC 321 and [2015] EWHC 322. There was another hearing on 8 and 11 May 2015 concerning privilege, leading to a judgment on 8 June 2015: [2015] EWHC 1557, which is also to be found on BAILII. He delivered a further judgment on 15 June 2015 arising out of the 8 June 2015 judgment, and another on 10 September 2015 concerning RBS's application to amend its defence. A hearing on 5 and 6 November 2015 led to two further judgments. One was given on 13 November 2015: [2015] EWHC 3272. It (1) permitted PAG to amend its particulars of claim to allege fraud and dishonesty by RBS; (2) dealt with disclosure consequential on the amendments; and (3) addressed proposed amendments by RBS to its defence. Another judgment was given on 20 November ([2015] EWHC 3441, which is again on BAILII) which (1) directed inspection of audio recordings made by the chief executive of PAG; (2) dealt with the inadvertent disclosure of a privileged email; and (3) directed a review of privilege.

39. The trial has been fixed to commence on 23 May 2016, with a time estimate of eight to ten weeks. There has also been listed a pre-trial review ("PTR") on 7 and/or 8 April 2016, with a time estimate of one day.

40. The matters which are likely to be of particular significance in deciding whether to accede to a contested application to transfer existing proceedings into the Financial List, where those proceedings satisfy the definition of "Financial List claim" in CPR 63A.1(2), will include the following: (1) the extent to which the case concerns matters of market significance, as distinct from factual and other matters relevant only to the case and the parties in question; (2) the relative importance of the issues of market significance; (3) whether the case has already been assigned to a judge; (4) whether, if transferred into the Financial List, the proceedings would require a change of judge; (5) the length of time in which the proceedings have already been on foot; (6) the extent to which an assigned judge has already conducted hearings and delivered judgments in the pending proceedings, and his or her general familiarity with the case; (7) the extent to which the familiarity of the existing assigned judge with the case would enable judicial trial pre-reading, and the trial itself, to be conducted in a more efficient and timely way than if a new Financial List judge were to be appointed; (8) whether or not the trial date has been fixed, and, if so, the proximity to the trial date; (9) whether the trial timetable would be disrupted by the transfer into the Financial List; and (10) whether, and if so, assigning a new Financial List judge would be disruptive to one or more other cases in the other lists, because the new judge would no longer be able to conduct those other proceedings, or for any other reason.

41. I have reached the conclusion, having read the witness statements and the skeleton arguments, and listened to the oral submissions of Mr David Foxton QC for RBS, on the one hand, and Mr Lord, on the other hand, that this is an


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appropriate case to be transferred to the Financial List, even though that would involve a change of judge because Birss J is not a Financial List judge.

42. Birss J has managed these proceedings conscientiously and to a high standard since their inception. Plainly, as is expressly recognised in the Guide, all judges of the Commercial Court and of the Chancery Division are capable of handling general financial and business disputes of all kinds. For that reason, even though a case may fall within the wide definition of "Financial List claim" in CPR 63A.1(2)(a), it will not always be necessary or appropriate to transfer every such claim into the Financial List. Financial List claims within CPR 63A1.1(2)(b) and (c) are different. The Financial List is deliberately restricted to a relatively small cadre of judges who are not only particularly expert in the law applicable to financial markets, but they will also be abreast of important developments in the practices of those markets.

43. Certain aspects of the present proceedings, particularly those concerning the transfer to and management of PAG's banking affairs by GRG, turn on the unique and particular facts of the present dispute. On the other hand, the allegations concerning the alleged misselling of the four interest rate swaps and particularly the allegations concerning the alleged improper conduct of RBS in relation to the fixing of LIBOR rates involve important issues of general market significance, which are clearly relevant to other participants in the markets and their clients. It is well known, that there are others who have claims, and are now or are likely in the future to be litigating, in relation to similar issues arising out of the alleged rigging of LIBOR rates. It seems reasonably clear that the judgment following trial in the present proceedings will have an impact on other cases already launched and those which will be launched in the future. It is also likely that decisions about provisions in the agreements between RBS and PAG limiting RBS's exposure to claims for negligence will have relevance elsewhere in the markets.

44. Allied to those considerations is the point that if, particularly in relation to the LIBOR allegations, this case is to be viewed in a general sense as a test or lead case, which will be followed by others suitable for and likely to be commenced in or transferred into the Financial List, it is desirable that it be dealt with by a judge of the Financial List in order that the judgment following trial carries appropriate weight and respect in the financial markets.

45. Another important consideration is that it will be possible, notwithstanding the proximity of the dates fixed for the PTR and for the commencement of the trial, for another Financial List judge – in fact, one from the Chancery Division (although that is not an essential requirement) – to be made available to conduct both the PTR and the trial. There will therefore be no disruption to either by virtue of a transfer into the Financial List.

46. I accept PAG’s complaint that there has been some undue delay in making this application. It would have been preferable and possible for the application, which was not in fact made until 13 January 2016, to have been made very shortly after the commencement of the Financial List on 1 October 2015. On the other hand, a PTR has not yet been held. It is highly desirable, and almost invariably the practice in the Chancery Division, that in a case of this size and


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complexity the same judge will conduct both the PTR and the trial. That will be the usual practice in the Financial List. As I have said, that will still be possible even if an order for transfer is made at this stage. In other cases, delay may carry more significant consequences.

47. I have received assurances from Mr Foxton that there is no intention on the part of RBS to apply to adjourn the trial because of any doubts there may be about the adequacy of the trial time estimate, and I have no doubt that the new judge assigned to conduct these proceedings from this point onwards will use all appropriate management powers to ensure both that the trial will commence on time and that it will be completed in an efficient manner within the time estimate. I have also been assured by Mr Foxton that there is no present intention on the part of RBS to make any applications concerning procedural matters which might disrupt the commencement of the trial. These assurances give comfort that assigning the proceedings to a Financial List judge, with the consequent loss of one of the great advantages of the earlier docketing to Birss J, namely that his familiarity with the proceedings would enable him more easily to recognise and deal firmly with unmeritorious or doubtful interlocutory applications which might disrupt the efficient disposal of the proceedings, will not in fact carry adverse consequences.

48. For all those reasons I consider that a transfer of the proceedings into the Financial List satisfies the requirements of CPR 30.5, paragraph 4 of Practice Direction 63AA and the overriding objective.

49. I shall direct, therefore, that this case be transferred into the Financial List, to a judge to be assigned to it; that the PTR will take place on 7 and/or 8 April 2016 with a time estimate of one day; and that, subject to any other directions which may be given by the new judge in the future, the trial itself will start on 23 May 2016.


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