JUDICIARY OF
ENGLAND AND WALES

29 June 2018

SUMMARY

Taveta Investments Limited -v- The Financial Reporting Council & Others [2018] EWHC 1662 (Admin)
Mr Justice Nicklin

[*references in square brackets are to paragraphs in the judgment of the Court*]

1. The Court has given judgment on an application by Taveta Investment Limited ("Taveta") for the continuation of interim restrictions on publication of criticisms of its directors or employees it contends are contained in documents that the Financial Reporting Council ("FRC") wishes to publish. The documents – comprising a Settlement Agreement and Particulars of Fact and Misconduct ("Particulars") - contain the FRC's reasons for its decision to impose sanctions on PricewaterhouseCoopers and its audit partner, Stephen Denison, following the FRC's investigation into the audit and financial statements of BHS Limited for the year ending 30 August 2014.

2. Taveta together with its subsidiary companies, including Arcadia Group Limited, comprise the Taveta Group. Arcadia owns UK high-street brands including *Topshop*, *Topman* and *Miss Selfridge*. A further subsidiary of Taveta, Taveta Investments (No.2) Limited, used to own the BHS group until its sale in 2015 [5].

3. The FRC is an independent regulator with a range of responsibilities. It is responsible for setting the UK Governance and Stewardship Codes and UK standards for accounting and actuarial work and is the UK competent authority for statutory audit, setting audit and ethical standards, and monitoring and enforcing the quality of audit. The FRC is the investigative and disciplinary body for accountants and actuaries in the UK. It carries out these functions under its Accountancy Scheme ("the Scheme") [2].

Taveta's Claim

4. In accordance with the FRC's publication policy, on 8 June 2018, Taveta was sent an advance copy of the Settlement Agreement and Particulars. It was given until 12 June 2018 to raise any accuracy concerns with the FRC [14]. Over the weekend of 9-10 June 2018, Taveta raised concerns with the FRC that the Particulars contained criticisms ("the alleged criticisms") of Taveta and its directors and/or employees ("the Taveta Personnel") to which they had not been given a proper opportunity of responding [18]. On 11 June 2018, the FRC told Taveta that it considered that the Particulars did not make findings against any individual or entity other than PwC and/or Mr Denison [19].

5. Taveta issued this claim for Judicial Review on 12 June 2018 and sought an urgent injunction preventing publication of the alleged criticisms until Taveta had been given

a fair opportunity to respond to them ("the application for interim relief") [22]. Although the FRC was willing to put its publication date back to 7am on Thursday 14 June 2018, that did not give sufficient time for a hearing of the application to take place. At 16.45 on 12 June 2018, the Court made a short-term order prohibiting publication of the alleged criticisms until a hearing that was fixed for Friday 15 June 2018 [26]. The FRC issued a press release late on 12 June 2018 announcing the sanctions – including substantial fines [7] - that had been imposed on PwC and Mr Dennison [27], but withholding from publication the details contained in the Settlement Agreement and the Particulars [28].

6. There was an initial hearing in open court on Friday 15 June 2018. At that hearing, the parties agreed that the substantive application for interim relief would be heard on Thursday 21 June 2018. In the meantime, the FRC agreed not to publish the alleged criticisms until the Court had determined the application [39]. The Court heard the application for interim relief on Thursday 21 June 2018 and reserved judgment.

7. The hearings before the Court have taken place in public, save for limited parts of the hearing on 21 June 2018 which necessarily had to take place in private because a public hearing of Taveta's complaint about the Particulars would have brought into the public domain those parts of the Particulars that by the proceedings it was arguing should not be published [43]. The Court's judgment, handed down today, is a public judgment but has an Appendix which, for the moment, will not be made public for the same reasons [45].

Decision

8. The application for interim relief has been made very early in Taveta's claim for Judicial Review. At this stage, when deciding whether to grant the application, the Court has to decide whether there is a serious issue to be tried in the claim for Judicial Review and, if so, whether an injunction should be granted in the meantime. The merits of the Judicial Review claim will be determined at a later date.

9. The Court was satisfied that Taveta had demonstrated that there was a serious issue to be tried.

- The Particulars and Settlement Agreement in the form that the FRC wishes to publish them arguably make implied criticisms of the Taveta Personnel. Were they to be published in that form, then there is a serious issue to be tried as to whether they would defame the Taveta Personnel. Objectively judged, that meaning the Court has found the Particulars to bear would be serious and arguably satisfies the requirements of s.1 Defamation Act 2013 [60(i)].

- There is a serious issue to be tried as to whether, as the Particulars and Settlement Agreement arguably contained criticisms of Taveta Personnel, the FRC owed Taveta a duty of fairness to give them a fair opportunity to respond to the alleged criticism before publication.

- There is a serious issue to be tried as to whether the FRC has breached this duty of fairness [90]. The Court found that the duty of fairness would not satisfied by publication of a Disclaimer [86].

10. Had the Court been considering the application for interim relief as a matter of private law rights (i.e. not a claim brought against a public authority), it would have granted an injunction [94]. However, the test for granting injunctions in public law cases is

much stricter [95]. Although the Court considers that the higher threshold in public law cases may not be justifiable [97], it is clearly established in law and the Court has therefore applied the higher test. Applying that test, the Court was not satisfied that Taveta's case was "exceptional" and so its application for an injunction was refused [99]-[101].

11. In light of some earlier press reports of the proceedings, it should be noted that Sir Philip Green is not a party to the proceedings. The Taveta Personnel whose interests Taveta argued would be adversely affected by the threatened publication by the FRC did not include Sir Philip Green.