

OPUS2

LINK FUND SOLUTIONS LIMITED v THE COMPANIES ACT 2006

Day 2AH1

October 12, 2023

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1 Thursday, 12 October 2023
 2 (10.30 a.m.)
 3
 4 DISCUSSION re Written Submissions
 5 MRS JUSTICE BACON: Thank you very much. Just
 6 before I start, can I just check what the screen is
 7 doing? Is it with a transcriber?
 8 MS TOUBE: All of these things, I believe, are
 9 set up for a trial that is going to start this
 10 afternoon.
 11 MRS JUSTICE BACON: I see. All right.
 12 MS TOUBE: So I suspect that is what it is.
 13 MRS JUSTICE BACON: All right. Can I just say
 14 that I have had a variety of submissions this
 15 morning. I am not sure whether they have been
 16 circulated to everyone on the counsel team. I have
 17 had emails early this morning from Mr Pyatt, I have
 18 had a written submission from Mr Bishop, and I have
 19 had another submission from Mr Agathangelou. Have
 20 those been sent to everybody?
 21 MS TOUBE: I certainly have not seen them, my
 22 Lady.
 23 MRS JUSTICE BACON: No? All right. They go to
 24 the process issues. I think it is fair to say that
 25 they express general concern at the process points,

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1 and I am sure that they essentially reiterate points
 2 that have been made earlier and I know also have
 3 been made over the course of the past couple of
 4 days. Could you perhaps ask those behind you to
 5 contact my clerk and arrange for those submissions
 6 to be sent on to you? So, for the avoidance of
 7 doubt, I will read out the timings of the emails.
 8 Email from Mr Pyatt sent this morning at 6.42. Then
 9 somewhat later, I am afraid I have not got the time
 10 printed out here, a written submission in a Word
 11 document sent by Mr Mark Bishop, and then at 8.56,
 12 an email from Mr Agathangelou. Now, can I check
 13 whether Mr Bishop and Mr Agathangelou are here
 14 today?
 15 MR BOMPAS: Yes, indeed, they are here.
 16 MRS JUSTICE BACON: Both of them? All right.
 17 So they are both in court. I think perhaps it would
 18 also be helpful if you would— Do you have the
 19 email addresses of a contact at Clifford Chance?
 20 MR BOMPAS: I am sorry, I could not quite hear
 21 the question, my Lady.
 22 MRS JUSTICE BACON: Do you have the email
 23 addresses for the solicitors at Clifford Chance?
 24 MR BOMPAS: I am not sure I have.
 25 MRS JUSTICE BACON: All right. Well, they are

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1 in court so you could just go and speak to them and
 2 ask for those to be sent to you. I think it is fair
 3 to say that the matters that are set out in those
 4 emails are matters that we will be coming onto in
 5 any event. What I will say now is that Mr Bishop
 6 alone among those asked if he could make further
 7 submissions at the hearing today before I delivered
 8 judgment. Initially, I refused that request on the
 9 basis that the issues of class composition had been
 10 addressed at the hearing which concluded on Tuesday
 11 and that I was not minded to hear further
 12 submissions on those issues. Mr Bishop then replied
 13 saying that he wanted to make submissions on a new
 14 point and new information that had only just come to
 15 light. Rather than inviting him to make submissions
 16 for the first time at the start of the hearing
 17 today, I asked if he would set out by email what his
 18 submissions were, and I am sorry that was not copied
 19 to you, apparently, but hopefully that everyone's
 20 solicitors will now get that.
 21 Having looked at those submissions, I am
 22 satisfied that the points that Mr Bishop wanted to
 23 make go to the process points, and although he says
 24 at the end of his written submission that he thinks
 25 that that goes to class composition, I do not agree

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1 with that submission, and I am just going to read
 2 out, for everyone in the court, the point that he
 3 makes regarding class composition:
 4 "We ask that the court gives
 5 consideration to requiring two votes, one
 6 for private investors, the other for
 7 institutional, with a 75 per cent by value
 8 of those participating threshold for each,
 9 and especially in relation to the former,
 10 given concerns about shortcomings and
 11 challenges in communications, also a
 12 meaningful threshold in terms of the
 13 proportion of all investors in that class
 14 who actually cast their votes."
 15 If I understand rightly, what he is saying is
 16 that given his concerns about challenges and
 17 shortcomings and communications, he considers that
 18 the court should order two votes. I will address
 19 that at the end of my judgment, but I am just going
 20 to say now that that is not an issue that goes to
 21 class composition; it is an issue that goes to
 22 whether I am satisfied with the material that is
 23 being given to the investors as part of the package
 24 ahead of the court meeting and the sanction hearing.
 25 So I am not going to invite or indeed permit

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1 any further submissions to be made now. I am going
 2 to give judgment for the-----
 3 MS TOUBE: My Lady, I am so sorry, but I am
 4 told that the live stream is not working.
 5 MRS JUSTICE BACON: Ah. All right.
 6 MR SMITH(?): Judge, I think it is actually the
 7 sound is-- (inaudible)-----
 8 COUNSEL: There is no sound.
 9 MRS JUSTICE BACON: All right. Is it that
 10 those on the live stream cannot hear me?
 11 MR BOMPAS: It is unmuted now.
 12 MRS JUSTICE BACON: And I am not sure which of
 13 these microphones is the right one.
 14 It is this one? All right. All right.
 15 MS TOUBE: Yes. I think it is-----
 16 MRS JUSTICE BACON: Is that better for those on
 17 the live stream?
 18 MS TOUBE: Can we work out the answer to that?
 19 Is it better now? I do not know. Where did we find
 20 out it was not working?
 21 MRS JUSTICE BACON: Can someone on the live
 22 stream perhaps indicate whether they can now hear
 23 the proceedings in court?
 24 MR BOMPAS: I am told, not.
 25 MRS JUSTICE BACON: Is any sound audible, or is

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1 it just faint?
 2 COUNSEL: I think it was just faint.
 3 MRS JUSTICE BACON: Well, the microphone is as
 4 close as it can be, really, to my mouth without me
 5 actually eating it. I am not sure that I can do
 6 much better than that, if this is, as I understand
 7 it, the correct microphone? Can they hear any
 8 better now?
 9 MS TOUBE: No.
 10 MRS JUSTICE BACON: Is there another microphone
 11 that can be used? Is this one also for the live
 12 stream?
 13 COUNSEL: They can hear it, but it is very
 14 quiet.
 15 MRS JUSTICE BACON: Yes, all right, let me see
 16 if that can be brought closer. Is that any better
 17 for those on the live stream?
 18 COUNSEL: We are checking. (After a pause) No.
 19 MRS JUSTICE BACON: No? All right, what I am
 20 going to do, I am just wondering if there is any
 21 other court available. I know it is going to
 22 involve everyone moving, or if a technician can be
 23 brought in?
 24 COUNSEL: If needs be we can find a technician.
 25 MRS JUSTICE BACON: Yes, can you sort that out?

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1 I will just rise now. Given that there are large
 2 numbers of people who have dialled in, I do not want
 3 to go ahead if there is anything that we can do to
 4 enable the audio on the live stream to work. All
 5 right, thank you, but we only do have until one
 6 o'clock because, as I understand it, there is
 7 another hearing here this afternoon and I have got
 8 other commitments this afternoon. All right.
 9 (10.38 a.m.)
 10 (Short break)
 11 (10.47 a.m.)
 12 MRS JUSTICE BACON: Are those who are on the
 13 live feed now able to hear the court proceedings?
 14 COUNSEL: Yes, they can.
 15 MRS JUSTICE BACON: Good. All right.
 16 (See separate transcript for judgment)
 17 DISCUSSION re Consequential Issues
 18 MRS JUSTICE BACON: Are there any consequential
 19 issues that immediately follow from that?
 20 MR BOMPAS: My Lady, I just wanted to mention
 21 something that arose out of your Ladyship's
 22 judgment. You identified the number of Harcus
 23 Parker and Leigh Day clients. In fact, there are
 24 more than that that are their clients and have the
 25 same claims. There have been a limit on what the

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1 claims have been issued.
 2 MRS JUSTICE BACON: All right-----
 3 MR BOMPAS: So, it is a small point.
 4 MRS JUSTICE BACON: -- so, what I am proposing
 5 to do, when I get the transcript of my judgment, I
 6 am, of course, not going to simply approve that and
 7 send it back to the transcribers. What I will do is
 8 to send it to counsel for comments and corrections.
 9 My judgment is my judgment as it stands today, but
 10 that will be an opportunity for you-----
 11 MR BOMPAS: To correct that sort of small
 12 point.
 13 MRS JUSTICE BACON: -- particularly to correct
 14 small points like that. I am aware that this
 15 judgement has been delivered essentially extempore,
 16 at very short notice, so no doubt there will be
 17 points of detail that you will both want to comment
 18 on.
 19 MR BOMPAS: We are all grateful for the time
 20 your Ladyship's put into that.
 21 MRS JUSTICE BACON: Yes.
 22 MR BOMPAS: But there is, again, another point
 23 which I think may come up this morning. My learned
 24 friend has a view about it. That is the question of
 25 the identification, the identity, between Scheme

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1 Creditors and current investors. I think that your
 2 Ladyship made the remark that Scheme Creditors
 3 receive in proportion to their investments in the
 4 fund. As I am going to explain when one comes to a
 5 point on the documents — I mean it may not even be a
 6 detail we need to go into for the purposes of the
 7 next stages on — there is actually a disparity. You
 8 may be a Scheme Creditor without holding any present
 9 investment and as such you may not receive anything
 10 out of the Fund as a result of this compromise, and
 11 that is the mismatch I did explain briefly in my
 12 oral address to your Ladyship.

13 MRS JUSTICE BACON: Right. All right. Well,
 14 if that goes to anything which is in my judgment,
 15 you will no doubt (inaudible)-----

16 MR BOMPAS: I do not believe it is, although it
 17 may be relevant when one comes to actually how the
 18 Scheme is formulated.

19 MRS JUSTICE BACON: Yes, all right.

20 MR BOMPAS: Which is going to be--- it is really
 21 a matter for the company now, I think.

22 MRS JUSTICE BACON: Yes, all right. So, that
 23 is the class composition issue. Now, as I said in
 24 my judgment, there are two other main issues, I
 25 think, and correct me if I am wrong. The first is

1 the process issues, how we deal with this going
 2 forward. That includes the process of notification
 3 and the information, the content of the information
 4 which is given to the interested parties in the form
 5 of the explanatory statement and other materials.
 6 Now, those issues, I know, have greatly troubled
 7 many of the investors, and I want them to understand
 8 that I have read those submissions. I have read
 9 your emails this morning. I have considered
 10 carefully the submissions made to me in writing, and
 11 of course the concerns that were expressed orally at
 12 the hearing on 10 August.

13 I did briefly skim down the table in the most
 14 recent document that was sent to me. I am afraid it
 15 only got to me a short time before the hearing. I
 16 cannot claim in that time to have read in any detail
 17 the 385 pages of that document. What I did do is to
 18 very quickly go to a table that is located somewhere
 19 near the end, starting at p.321 with the Scheme
 20 Creditor feedback. Now, my understanding from that
 21 table is that following the hearing a message was
 22 sent to investors asking for their comments on the
 23 draft scheme documents and in particular the
 24 Explanatory Statement. I have read very quickly the
 25 comments that have been summarised in that table and

1 the Clifford Chance response.

2 Now, some of the comments are, I think it is
 3 fair to say, issues that really go to the
 4 sanctions--- well, not to the sanctions--- partly to
 5 the sanctions stage and partly to simply comments on
 6 the way that those investors are going to vote at
 7 the court meeting. That is not for me now, but
 8 there were a number of comments about the short
 9 period of time which those contacted had had to
 10 comment on the documents. I just wanted to record,
 11 and I am not making any determination on that, but I
 12 just wanted those who are on the live stream and
 13 those who are here in court to know that I have read
 14 that table because that seemed to me to contain
 15 additional information about the concerns of the
 16 investors. So, I do want you to know that I have
 17 read those, and I will be hoping for responses from
 18 Ms Toube and others this morning as to what is to be
 19 done about those concerns.

20 As a final point, I think that one, maybe more,
 21 of the comments complained that there had only been
 22 a brief opportunity at the end of Tuesday's hearing
 23 for Mr Pyatt and Mr Dickenson to comment and that
 24 they went last. The reason for putting them last
 25 was that it was apparent from the outset that the

1 main issue was going to be class composition, which
 2 was the subject of legal submissions, and I had
 3 extensive legal submissions from both sides at the
 4 hearing. Most of the issues raised by Mr Pyatt and
 5 Mr Dickenson, and indeed all of the individual
 6 investors who have made comments, go to the question
 7 of process and the voting form, and although it is
 8 important to hear their submissions, and we did hear
 9 those submissions, those were obviously the subject
 10 of further discussion between the parties. So, it
 11 was not a good use of court time and in a hearing
 12 that had already gone on for beyond the end of the
 13 court day to hear extensive further submissions on
 14 matters that were still subject to discussion, but I
 15 do know that there have been further comments from
 16 both of those individuals since to which Clifford
 17 Chance have made responses, and I have briefly
 18 looked at Clifford Chance's responses.

19 I should also say that I have also skimmed
 20 through the Explanatory Statement and the red line
 21 to that to see the changes that have being made.
 22 Again, since this document was provided to me about
 23 half an hour before the hearing, you will not be
 24 surprised to hear that I have not gone through it
 25 with a fine-tooth comb. Can I just say, I

1 identified one typographical error. On p.173 of the
 2 bundle, there was a red line which said "third
 3 parry" rather than "third party," but I have not—
 4 although you might think from that, so I have gone
 5 through it with a fine—tooth comb, that just leapt
 6 off the page. I would like Ms Toube and Mr Bompas
 7 and others as appropriate, including the investors,
 8 to make submissions as appropriate as to the process
 9 going forward, and in particular, I would like Ms
 10 Toube to respond to the concerns about timing for
 11 further comments and notifications. So, Ms— I
 12 think really you should start off by making
 13 submissions on the process points now.

14 SUBMISSIONS by Ms TOUBE

15 MS TOUBE: Yes. If you will just allow me,
 16 before I do that, there is one point that I will
 17 forget if I do not do it first, which is there is a
 18 correction which has been asked to be made to one
 19 paragraph of the witness statement, and that
 20 appears-----

21 MRS JUSTICE BACON: Is this Mr Midl's witness
 22 statement?

23 MS TOUBE: It is Mr Midl's witness statement.

24 MRS JUSTICE BACON: Oh, I have got the original
 25 hearing bundle up. Which page?

13

1 MS TOUBE: It is--- I am sorry, just give me a
 2 moment. It is at p.78 of the original hearing
 3 bundle. It is para.180.

4 MRS JUSTICE BACON: Yes.

5 MS TOUBE: And this is a point that was
 6 referred to in the letter that appears at p.362 of
 7 this new bundle. So, it is the Linklater's letter.

8 MRS JUSTICE BACON: Yes.

9 MS TOUBE: And effectively the point is this,
 10 it is the question about what was or was not
 11 originally halted under the Standstill Agreement,
 12 and at the moment, para.180 says that the claims are
 13 currently halted under the Standstill Agreement. It
 14 should not say that. It should say--- and we would
 15 propose to amend it to say, "HLAM in the event that
 16 it establishes contribution claims against FSL," and
 17 delete the rest of that.

18 MRS JUSTICE BACON: Yes.

19 MS TOUBE: None of this is material, but they
 20 specifically asked us to correct it.

21 MRS JUSTICE BACON: No, and it is proper. This
 22 was a document before the court. Although it is not
 23 material, I think to the discussion that we are now
 24 about to have, it is absolutely right that you draw
 25 that to my attention. Thank you very much.

14

1 MS TOUBE: So that is point number one. Number
 2 two: I was just going to tell your Ladyship what we
 3 have done since the last hearing, and I think you
 4 will have--- I say you will have picked it up, you
 5 will have picked it up by the fact that there is
 6 that table that, as your Ladyship suggested, we did
 7 go out. We sent the documents in the bundle to Mr
 8 Dickenson and Mr Pyatt. We sent the--- put the draft
 9 Scheme documents up on the website. We sent them to
 10 the platform and directly to the direct holders who
 11 we know about. We sent all the documents again to
 12 Leigh Day, Marcus Parker, the Investment Committee,
 13 the Independent Advisor, the FSCS, the Parent, the
 14 FCA, and Hargreaves Lansdown.

15 Hargreaves Lansdown told us that they had sent
 16 them on to the investors. We received comments from
 17 Leigh Day, Marcus Parker, Mr Pyatt, Mr Dickenson,
 18 Quilter, Hargreaves Lansdown, the Investor Advocate,
 19 and we had a conference call with my learned
 20 friends. We then had, as you will have seen, a
 21 number of disparate communications with other
 22 investors.

23 MRS JUSTICE BACON: Yes. Can I just say that I
 24 would like to record my gratitude to everyone for
 25 the hard work that has gone on since that hearing.

15

1 I think that should be noted. It is obvious that
 2 you have all done a lot of work. I know there are
 3 some remaining concerns, but you did do what I asked
 4 you to do, and I think everyone will appreciate that
 5 you reached out and invited comments on that. So,
 6 thank you and thank you to those behind you as well.

7 MS TOUBE: Thank you, and I should say those
 8 behind me have not slept very much, so I have
 9 already told them how grateful I am to them for
 10 having done that. You will also have seen that
 11 Clifford Chance responded to a lot of these various
 12 bits and pieces. It is true to say that 23, I
 13 believe, of the investors complained that they did
 14 not have enough time to consider the matter. We
 15 then got a disparate group of responses. Five
 16 investors said they supported the Scheme; one said
 17 that they were going to vote against it; two of them
 18 said that they had complaints against Leigh Day,
 19 which we sent on to them; three had complaints about
 20 the FCA; seven had comments on the Explan; nine had
 21 comments on the voting form; and four had complaints
 22 about various other people, I think. So, that is
 23 what has happened since.

24 Just before we deal with what we do next, I
 25 think it is important to start by saying what is the

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1 normal scheme process. So, normally, the Explan
 2 does not go out to anybody at all until after the
 3 convening hearing. The court of course only has to
 4 approve it at a high level, and so we are certainly
 5 not asking the court to go through and draft on any
 6 of these issues.

7 MRS JUSTICE BACON: No. I mean, of course. I
 8 think this may be a matter of some confusion. Of
 9 course, if there are problems with the information
 10 that has been given in the explanatory memorandum
 11 and any of the other documents, those can quite
 12 properly be brought to the attention of the court at
 13 the sanction hearing.

14 MS TOUBE: Yes. Although— and your Ladyship
 15 will remember we had this discussion that although
 16 my learned friends have obviously raised a number of
 17 points already, they wanted to reserve their rights,
 18 and I said, "Well, the practice statement makes it
 19 clear that if there are issues with the Explanatory
 20 Statement, then the court can deal with that issue
 21 at sanction." So, there is no— although the
 22 investors have not had an opportunity to draft the
 23 documents — and I should say such comments as we
 24 have had that have been helpful, we have taken into
 25 account already — that is not shutting them out

1 from saying whatever they want to say about that in
 2 due course, but that is not really a matter for now.

3 Then we have the question of how we get the
 4 notification of all these various documents out and
 5 how the voting takes place and all those various
 6 issues. The first is the voting itself. We
 7 discussed with your Ladyship at the last hearing
 8 that this would happen by a sort of semi—hybrid
 9 meeting. We have amended both the convening order
 10 and the Explanatory Statement, and the voting form
 11 to give the opportunity for people to say, "I cannot
 12 deal with this by the internet or by telephone. I
 13 can only deal with it by turning up." Then that
 14 will be considered and then whoever needs a room, we
 15 can provide a room in London, should that be
 16 necessary. So, that is hybrid, and I believe that
 17 is agreed, and I know that the Investor Advocate
 18 also supports that.

19 Then, we have the question of notification.
 20 So, how do we get these documents out there? As I
 21 explored with your Ladyship at the last hearing, we
 22 do not have details of most of the underlying
 23 investors. We are not entitled to get details of
 24 the underlying investors from the platforms, and it
 25 would be dealing with the underlying investors in a

1 way that is not the way that they normally deal with
 2 their investments. But we obviously want to get the
 3 information out there and people to know what it is,
 4 and to be able to consider it, and to vote.

5 I did have an opportunity to have a brief
 6 discussion with Mr Smith and the FCA this morning
 7 about a suggestion that was made by one of the
 8 Scheme supervisors, which was that it might assist
 9 if the FCA could directly contact the platforms and
 10 say, "Please put this down to your investors. So,
 11 push it down to your investors." There are quite a
 12 lot of them. I understand there are about 90
 13 platforms, so I am not going to— I do not think I
 14 am in a position to commit the FCA to doing this,
 15 but they have said they will do what they can to
 16 help.

17 MRS JUSTICE BACON: Yes. What about the
 18 suggestion — I think it was Mr— you probably have
 19 not had this because this is one of the emails that
 20 has just come to me. I had a suggestion. I saw a
 21 suggestion somewhere that in sending the
 22 communications to investors— yes. Sorry. This was
 23 Mr Pyatt:

24 "The company should be instructed by
 25 the court that the platforms and

1 intermediary communications to their
 2 clients must ensure any automatic
 3 notification directly refers to urgent,
 4 important WEIF Link Equity Income Funds,
 5 and if that cannot be achieved by an
 6 automated email notification system, then
 7 the platforms and intermediaries can send
 8 a direct email to the clients and not
 9 through the platform portal, with the same
 10 words in the subject, 'Urgent, important
 11 WEIF Link Equity Income Fund.'

12 If I understand the point being made, it is
 13 that in some cases — well, it is often the case via
 14 these platforms, and it is the same when banks, for
 15 example, communicate with you — all the customer is
 16 told is that there is a message sitting in your
 17 online account, and in most cases it is a routine
 18 communication which does not need your urgent
 19 attention. I think the problem being identified
 20 here is that one might get a similar automatic email
 21 notification which does not tell you anything at all
 22 about the subject matter of it, which does not draw
 23 to the customer's attention, that they really do
 24 need to look at this urgently, as opposed to in six
 25 months or a year's time when they do their— you

1 know, catch-up on administration, seeing that there
2 is a letter with terms and conditions or something
3 routine like that.

4 MS TOUBE: So, I think the short answer is that
5 we do not have any problem with asking the platforms
6 to do that, or indeed asking the FCA to also ask the
7 platforms to do that. I am not sure we can make
8 them do that.

9 MRS JUSTICE BACON: No, and the platforms are
10 of course not here. So it is very difficult for me
11 to make any order, but I could say that you should
12 ask the platforms to do that as part of your
13 communications with them, that either— if the
14 automated system enables attention to be drawn in
15 capital letters. You will see when you get this
16 email from Mr Pyatt what he suggested, but I do not
17 think it is an unreasonable suggestion. Either
18 attention should be drawn in capital letters to
19 this, that this is an urgent and important
20 communication regarding the WEIF Link Equity Income
21 Fund, or if that cannot be done in the automated
22 process, the platform should send an email to their
23 investors with that information in it.

24 MS TOUBE: Yes. We absolutely have no problem
25 with asking them to do that.

21

1 MRS JUSTICE BACON: Yes. All right. So, you
2 have dealt with the Explanatory Statement, the
3 hearing, the notification process. I am obviously
4 going to hear from others. I do not think you have
5 yet referred me to the content issue and the concern
6 raised by some of the individual investors and some
7 of those recorded in the table about the extent of
8 information they have received, in particular about
9 the FCA Draft Warning Notice. Now, I think it is
10 right to say that under s.391, as far as I
11 understand, the notice itself is absolutely
12 protected from publication. I cannot see any
13 carve-out in that for publication by consent.

14 What there is, however, in sub-s.1C is this:
15 "After consulting the persons to whom
16 the notice is given or copied, the
17 regulator giving the notice may publish
18 such information about the matter to which
19 the notice relates as it considers
20 appropriate."

21 So, although it appears to me— and I will
22 obviously hear submissions from others on this. It
23 appears to me that the notice itself cannot be
24 published and there is no exception to that. What
25 could be done is that further information could be

22

1 given about the FCA's investigation and case, and
2 that avoids the— it may not completely deal with it
3 because you will have literally the word for word of
4 what is in the Draft Notice, but I think the concern
5 is that not very much has been said.

6 MS TOUBE: Yes. We did have a discussion with
7 the FCA about how much we could say, and we came
8 down to these words because that was, as we
9 understood it, what could be said. As I recall it
10 from Mr Smith's submissions on the last occasion, it
11 is not just the company but anybody else who would
12 be-----

13 MRS JUSTICE BACON: No third parties-----

14 MS TOUBE: -- any third parties mentioned in
15 it. I think his indication was that it would be
16 very difficult to say very much more, or redact it,
17 or anything else. Now, if we can, I am happy to
18 revisit it with the FCA and see if there is more
19 that we and they can say, but as your Ladyship says,
20 there is an absolute bar on this.

21 MRS JUSTICE BACON: On publication of the
22 entire notice.

23 MS TOUBE: Absolutely right. So, it is a
24 question for the FCA as to what the regulator
25 considers appropriate under s.3911C.

23

1 MRS JUSTICE BACON: Yes. Well, I mean, I am
2 not sure that I can go further than that today, save
3 for saying that I would invite the parties,
4 including the FCA, to consider what more can be
5 said. And obviously, if by the time of the court
6 meeting and sanction hearing thereafter, if there is
7 approval of the Scheme at the court meeting, certain
8 investors consider that they still have not had
9 enough information, then again, that will be a
10 matter that can and should be brought to the court's
11 attention at the sanction hearing.

12 MS TOUBE: Understood. The position will, of
13 course, be no matter what the FCA says, the company
14 will say: "We fully dispute all of this."

15 MRS JUSTICE BACON: Yes.

16 MS TOUBE: So, all they will hear is what the
17 FCA has done and thinks and says, coupled with the
18 company saying, "We dispute this," but-----

19 MRS JUSTICE BACON: Yes. The concern being
20 raised is that it is difficult for them to make an
21 informed decision about the cost-benefit analysis
22 without some further information as to the basis for
23 the FCA's analysis.

24 MS TOUBE: I understand the point being made,
25 and your Ladyship is right. Insofar as there is any

24

1 point there, it is a point for sanction, but I also
 2 agree that if there is more that we can say with the
 3 FCA's— well, once the FCA exercises its discretion,
 4 because it is really a matter for them, then if they
 5 exercise their discretion for us to be able to say
 6 more, then we will be able to say more. So, that is
 7 absolutely understood. I do not think I had any
 8 other specific — but there are two other points I
 9 did have. One was on the voting form, and the
 10 question that my learned friend Mr Bompas raised
 11 about who can vote. Then, the second question is
 12 timetable.

13 MRS JUSTICE BACON: All right. Well, why do
 14 you not deal with everything? Then I will hear from
 15 everyone else on everything.

16 MS TOUBE: Thank you. So, what Mr Bompas says
 17 is, if I can put it this way: "What do we do in this
 18 situation where you have got somebody who had a
 19 Scheme Claim at the record date, so they were
 20 holding their shares at the record date, and then
 21 between then and now has sold it, so that that
 22 person is no longer— and sells it with the claim
 23 attached to it?"

24 COUNSEL: Without.

25 MS TOUBE: There are two situations: so, sells

25

1 it with the claim attached to it. In that case, the
 2 person who is the purchaser will be the Scheme
 3 Claimant and will be the person who receives the
 4 money. If the person who sells it post—suspension
 5 keeps the claim, so does not sell the claim on,
 6 keeps the claim—

7 MRS JUSTICE BACON: Does not assign the claim
 8 on—

9 MS TOUBE: Does not assign the claim on, so
 10 that the shares go here, but the claim stays here.
 11 What happens in relation to that? The answer is the
 12 vendor remains the creditor, because that is the
 13 person with the Scheme Claim, and the person who is
 14 now the beneficial owner will say, "Well, I am the
 15 beneficial owner," and will be the person who
 16 actually gets paid some money out of the trust
 17 because they are the person who is the beneficial
 18 owner. So, you have got a different person who is
 19 the person who is the Scheme Claimant, and the
 20 person who gets paid money.

21 MRS JUSTICE BACON: Yes.

22 MS TOUBE: The answer to that is there should
 23 be some agreement between these two people as to
 24 what happens to those proceeds.

25 MRS JUSTICE BACON: Yes. You say that that is

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1 a matter to be dealt with in the sale.

2 MS TOUBE: Exactly, and we say it is really a
 3 matter for them, that as far as we are concerned, we
 4 need to know who is the person voting, and then, who
 5 does the Scheme pay out? If those two people are
 6 not the same person and they have not made any
 7 arrangements between them, that is a matter—

8 MRS JUSTICE BACON: It will be fractured but
 9 that is a matter for then the seller going for
 10 (inaudible). All right.

11 MS TOUBE: Exactly. So, I think that is the
 12 answer to that. My learned friend says, "Well, that
 13 is not fair because if he has given his shares to
 14 his grandchildren and they do not give him back the
 15 money, then it means he loses out, even though he is
 16 the Scheme Claimant." And the answer is, "Well, we
 17 cannot legislate for all circumstances."

18 MRS JUSTICE BACON: Yes. Well, I am sure that
 19 this must arise in numerous Schemes.

20 MS TOUBE: It does, and this is how it is dealt
 21 with.

22 MRS JUSTICE BACON: Yes. All right, but was
 23 there anything other specific you wanted to say
 24 about the voting form? I see that there have been
 25 very considerable amendments to it.

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1 MS TOUBE: There have, and I should say in
 2 fairness that that has been a very useful
 3 conversation that we have had with my learned
 4 friends and with various other people to make
 5 changes to it. We want the voting form to be as
 6 clear as possible, and we think we have now got to
 7 a— it is not ever going to be a perfect form. My
 8 learned friend points out he has picked up typos.
 9 Well, that is— but that is drafting issues. So,
 10 there is nothing else specifically I wanted to say
 11 about the voting form.

12 MRS JUSTICE BACON: Yes. Timetable.

13 MS TOUBE: Timetable. So, the current
 14 timetable is the one we set out in our skeleton
 15 argument at para.86. So, the notice of the meeting
 16 is 17 October. The deadline to submit forms
 17 establishing that you are a creditor is 23 November.
 18 4 December is the vote, and then 15 December is the
 19 sanction hearing. It has been said by my learned
 20 friend, Mr Bompas, and various others, although not
 21 the Investor Advocate who thinks that this timing is
 22 sensible, that that is not enough time to consider
 23 things. What we say in response to that is, well,
 24 that is about seven weeks between the documents
 25 going out on 17 October, and the vote on 4 December.

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1 It is one day short of seven weeks, and it is
 2 twelve and a half weeks from the PSL. So, it is
 3 already quite a bit of time and that should be
 4 enough for people to read these documents and decide
 5 how to vote. As I said to your Ladyship at the last
 6 hearing, although there is no particular drop—dead
 7 date, we do want to get money out to the Scheme
 8 Creditors as soon as possible, assuming that the
 9 vote is achieved and the Scheme is sanctioned.

10 My learned friend has suggested that the vote
 11 should be— that the registration to vote should be
 12 just before Christmas, and that the sanction hearing
 13 should be in January, so effectively pushing
 14 everything a month. Now, ultimately, we are in your
 15 Ladyship's hands about what the dates should be for
 16 this, but the bottom line is we think it is enough
 17 time and we want to get on with paying people, and
 18 that is the short point.

19 MRS JUSTICE BACON: Yes. I am aware that as
 20 time goes on the legal costs will increase, so
 21 actually, for there to be a shorter timetable gives
 22 a greater amount of money in the settlement fund
 23 ultimately, for the investors.

24 MS TOUBE: Yes. We also do not necessarily
 25 think that having more time over Christmas is going

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1 to be particularly helpful.

2 MRS JUSTICE BACON: No. All right. Thank you
 3 very much, Ms Toube. So, who is going to comment
 4 next? Is there anyone on, if I might sort of
 5 colloquially say, your side of the court, who wants
 6 to comment further, so FCA? No.

7 MR HAYWOOD: No, my Lady.

8 MRS JUSTICE BACON: Investor Advocate.

9 SUBMISSIONS by Miss COOKE

10 MISS COOKE: Just a few brief points from the
 11 Investor Advocate's perspective. First of all, in
 12 terms of the documentation, we have provided our
 13 feedback and I do not have anything further to say
 14 on that. Secondly, notification to Scheme
 15 Creditors. The Investor Advocate notes that the use
 16 of the platforms is consistent with the
 17 communication routes to investors that they have
 18 signed up for, and we are content with what is
 19 proposed by the company and welcome the suggestion
 20 that the platforms are asked to confirm that they
 21 will draw attention to the fact that communications
 22 are urgent.

23 In terms of the timetable, as your Ladyship is
 24 well aware, not all Scheme Creditors speak with one
 25 voice. Your Ladyship will have submissions of

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1 others, but in terms of the Investor Advocate's
 2 position, I think it is worth flagging that issues
 3 about the timetable have not been a theme in the
 4 communications received by the Investor Advocate.
 5 Indeed, we received one email about short notice
 6 before the convening hearing, but nothing about the
 7 timetable more generally, and your Ladyship has seen
 8 the schedule in the supplemental bundle, and there
 9 are a number of emails there to the effect that the
 10 process should be taken forward, and essentially,
 11 that the process should be got on with.

12 The Investor Advocate does consider that it
 13 would be in the interest of the creditors to proceed
 14 on the basis of the timetable proposed by the
 15 company. A key aspect of the Scheme is obviously
 16 payment to creditors as soon as possible, and it is
 17 considered that there should not be any unnecessary
 18 delay in giving Scheme Creditors the opportunity to
 19 consider if that is what they want, and if the
 20 Scheme is approved and sanctioned, receiving
 21 payments in due course. Your Ladyship also has
 22 already made the point about costs. Whilst there
 23 have been various amendments to paperwork as well,
 24 the substance, as Ms Toube said, has been set out in
 25 the PSL some time ago, so we do consider that the

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1 timetable that the company proposes to be
 2 appropriate.

3 MRS JUSTICE BACON: Thank you very much. So,
 4 Mr Bompas, and then I will hear from any other
 5 investors.

6 SUBMISSIONS by Mr BOMPAS

7 MR BOMPAS: Yes. My Lady, the essential point,
 8 I think, is that having reached your Ladyship's
 9 conclusion on class, it is now, and absent anything
 10 obviously wrong with the Scheme, for the Scheme to
 11 go ahead, driven by the company, who will explain
 12 the Scheme and arrange the voting and so on and so
 13 forth, with the risk— It may be that when they
 14 come to the sanction hearing, the Scheme is rejected
 15 because there has been something that has gone wrong
 16 with the process, either in the way that the Scheme
 17 is explained, in its formulation, or in the
 18 communication.

19 Now, over the time since 5 October, in the
 20 evening, when we handed in the papers, there has
 21 been a very extensive dialogue between those
 22 instructing Clifford Chance most materially since
 23 the hearing, to try and iron out some of these
 24 difficulties, having regard to your Ladyship's
 25 comment that it would be unfortunate if (inaudible)

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1 for example, had been taken at the sanction hearing,
2 which might have been dealt with now. So, we have
3 tried our very best, but the time pressure is huge.

4 Your Ladyship noted a typing error. I have
5 noted myself three in the Scheme itself, including
6 in the provision that deals with the amendment of
7 the Scheme to correct anything that has gone wrong.
8 So, it is rushed, and that is not a— it means that
9 there are little glitches. One example I can take
10 out of the Scheme is on standstill. There is a
11 standstill in place, pending the Scheme being
12 terminated or becoming ineffective. Limitation is
13 dealt with as regards the company. There is no
14 limitation point going to be taken. The standstill
15 applies to third parties: officers and auditors and
16 all sorts of people, and there is no way in which
17 the limitation is, if you like, no longer an issue
18 for those people. This is in cl.2 of the Scheme, I
19 think. It is a smallish point.

20 MRS JUSTICE BACON: But are you expecting me to
21 deal with that now?

22 MR BOMPAS: No. I am not. I am just
23 illustrating that we have tried and we are trying
24 hard to help but, ultimately, it is going to be
25 after today probably over to the company. We do not

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1 want to be hung up if there are points that actually
2 when one looks at with adequate time, turn out to be
3 wrong.

4 MRS JUSTICE BACON: So, exactly when do you say
5 that more time needs to be built in?

6 MR BOMPAS: Well, to my mind, you see, the
7 starting point, 17 October to send out the documents
8 is very short. There is still a work in progress.
9 Your Ladyship would have had a bundle of 300 pages
10 amended this morning. We had the bundle delivered
11 in the morning of the 10th. We had another bundle I
12 think that came at— I think midnight on— yes, on
13 the 10th. So, Clifford Chance— I mean, it is not
14 a criticism; they have been working very hard, but
15 the fact is they are under huge pressure, and it
16 struck me that 17 October is going to impose further
17 pressure.

18 Then, a point was made in the previous hearing
19 that 15 December is, I think, allotted for the
20 sanction hearing, one day. Well, that is before
21 Christmas. If anything goes wrong, if the hearing
22 takes longer than a day, who knows what will happen?
23 So, our suggestion has been really in order to avoid
24 the Scheme becoming derailed for avoidable mistakes.

25 MRS JUSTICE BACON: Well, let us go through

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1 your proposals. When exactly do you say that the
2 notice should be sent to the Scheme Creditors? How
3 much more time do you want, bearing in mind that
4 every day that goes by there are further legal fees
5 being incurred, and there is a law of diminishing
6 returns?

7 MR BOMPAS: There is.

8 MRS JUSTICE BACON: At some point, people have
9 to stop correcting typos and asking for things to be
10 phrased in different ways. Realistically, now you
11 have had the Explanatory Statement for some time,
12 how long— how much more do you need to comment on
13 it?

14 MR BOMPAS: I mean, if one imagines that my—
15 if one takes it that my solicitors are given another
16 five days to work on the documents, that puts us
17 into next week already, and the 17th I think is
18 Tuesday next. So, you know—

19 MRS JUSTICE BACON: Well, what about extending
20 that to the 20th? That would give you until— I
21 mean, if the Scheme document— if the notice is to
22 be sent out on the 20th, when is the last day that
23 Clifford Chance will need to have comments— 18th,
24 19th?

25 MR BOMPAS: (Inaudible) what they are— 18th.

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1 MRS JUSTICE BACON: The 18th.

2 MS TOUBE: Yes, my Lady, 18th.

3 MR BOMPAS: Then there is going to be the
4 question of whether that affects the voting date,
5 which is at the moment 4 December. We would suggest
6 (inaudible) that should be pushed back, because at
7 the moment there is allowing approximately 10 days
8 between the voting and the hearing. My learned
9 friend would say—

10 MRS JUSTICE BACON: Well, to be honest, if—
11 An extra three days here or there is not, I do not
12 think, going to make very much difference at that
13 stage. You are saying you need a bit more time now
14 to comment on the documents. If you get until the
15 18th, which is almost a week from now, the documents
16 go out on the 20th. The deadline for submitting a
17 claim form to vote on the Scheme is then more than a
18 month away, one—

19 MR BOMPAS: Well, I think I would have to say
20 that if the deadline for voting is not to be
21 changed, I will not be thanked for having had time
22 shortened from the generality of the investors.

23 MRS JUSTICE BACON: Why is it necessary for
24 there to be more than a month from the notice of the
25 Scheme meeting to the deadlines for submitting a

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1 claim form to vote on the Scheme? That is not
 2 making a decision as to— I am going to come in a
 3 minute to the Scheme meeting, but why is it
 4 necessary to have longer than 23 November?
 5 MR BOMPAS: There is a practical point. Your
 6 Ladyship has heard from investors and knows that
 7 investors have complained about short times.
 8 MRS JUSTICE BACON: Yes, but they are not
 9 deciding at that point. They are just putting in a
 10 claim form to vote. Why do they need more than a
 11 month to decide if they are even going to make their
 12 voice heard?
 13 MR BOMPAS: Well, they need to decide how they
 14 are going to vote.
 15 MRS JUSTICE BACON: No. Not at that point, do
 16 they? They just have to put in a claim form to say
 17 that they would like to vote. Why do they need more
 18 than a month to make a decision as to whether they
 19 would like to say something?
 20 MR BOMPAS: And that they fill in the form,
 21 which is quite an elaborate form, correctly.
 22 MRS JUSTICE BACON: How long is the form?
 23 MR BOMPAS: It is now, I think, about 8 pages—
 24 13 pages, and it has quite a lot of detail in it,
 25 and it is going to take quite a lot of scrutiny.

1 MRS JUSTICE BACON: Why does that take more
 2 than a month? No. I would like a realistic answer.
 3 Why does it take more than a month for somebody to
 4 put in a claim—
 5 MR BOMPAS: I have been reminded that a
 6 platform can take two weeks to communicate, so one
 7 takes time to get the information out to the
 8 investors, and we have heard from some of the
 9 investors why more needs to be done to persuade the
 10 platforms to move matters forward.
 11 MRS JUSTICE BACON: Well, if we were to allow
 12 another three days, that would take us to, let us
 13 say, 27 November, to put it the other side of the
 14 weekend. That means that there is no less time than
 15 there would be. In fact, there is one more day at
 16 that stage, if that is 27 November, to submit a
 17 claim form to vote on the Scheme. How long do you
 18 want between the court meeting and a sanction
 19 hearing?
 20 MR BOMPAS: Frankly, I would have thought
 21 longer than is presently allowed for, (inaudible) 4
 22 December and 15 December. I would have thought, you
 23 see, that one is talking about having at least a
 24 fortnight.
 25 MRS JUSTICE BACON: Having—

1 MR BOMPAS: At least a fortnight, which that
 2 does not allow for, 10 days.
 3 MRS JUSTICE BACON: All right. The problem is
 4 that, if it is pushed much further back, then we are
 5 going to fall the other side of the vacation.
 6 MR BOMPAS: Well, I understand that, and that
 7 is actually why we put forward the suggestion, which
 8 my learned friend does not care for, for taking more
 9 time.
 10 MRS JUSTICE BACON: Can I just ask the company,
 11 is there a problem if the court meeting happens
 12 before the vacation and the sanction hearing happens
 13 after the vacation? Does that cause logistical
 14 problems?
 15 MR AL-ATTAR(?): No, it just delays payment.
 16 MS TOUBE: Yes. It does not cause a logistical
 17 problem; it just delays payment out at the other
 18 end.
 19 MRS JUSTICE BACON: All right, but if all of
 20 the investors who want to make representations say
 21 that they want there to be a month's delay, and
 22 everyone has had the opportunity to comment—
 23 MS TOUBE: Yes, I suppose that there are two
 24 points here. The first is all the investors who are
 25 here— I noticed that, in some of the comments, some

1 of the investors just said they wanted to get on
 2 with it, and the Investor Advocate has also said
 3 they think that the current timetable is effective,
 4 but the answer is, if your Ladyship wishes to give
 5 more time to them now, then the sanction hearing
 6 could take place in January.
 7 MRS JUSTICE BACON: Yes. So, what I am
 8 wondering about is whether the court meeting should
 9 then go ahead on, say, something like 15 December.
 10 I am reluctant to push it too far close to Christmas
 11 because people will have plans for the Christmas
 12 week. I think that is probably the latest that it
 13 could be, and then the sanction hearing would then
 14 need to be as early as possible in the new term,
 15 perhaps on 12 January.
 16 MS TOUBE: I did actually make enquiries as to
 17 when the court had availability in January, just in
 18 case your Ladyship were to ask this, and the
 19 earliest of those dates we were offered was 18
 20 January.
 21 MRS JUSTICE BACON: Yes, all right. Well, then
 22 it could be 18 January.
 23 MS TOUBE: I do not know if that still exists,
 24 but as of this morning, it existed.
 25 MRS JUSTICE BACON: Yes, so I could say, "The

1 first available date in the new term of January,"
 2 and that will be fixed without regard to counsel, I
 3 think, because it needs to go ahead at that point.
 4 MS TOUBE: I think that might— that probably
 5 would cause costs issues.
 6 MRS JUSTICE BACON: I see. All right. Well,
 7 the first available— I mean, do you both have
 8 availability in the first couple of weeks of
 9 January?
 10 MS TOUBE: I do, yes.
 11 MR BOMPAS: I certainly do, if I am going to
 12 be—
 13 MRS JUSTICE BACON: You would?
 14 MR BOMPAS: I mean, this assumes, at the
 15 moment, of course, the vote has gone in favour of
 16 the Scheme.
 17 MS TOUBE: Well, if it does not, then we do not
 18 need to worry about this.
 19 MRS JUSTICE BACON: No, all right. So, then
 20 the first available date which counsel can attend
 21 and the court will be available in January. So, can
 22 I just check, this is the timetable that I would
 23 propose having regard to the numerous comments about
 24 the timing: final comments to Clifford Chance by 18
 25 October; the Scheme notice to be sent out by the

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1 20th; deadline to submit claim form, 27 November;
 2 Scheme meeting 15 December; and then the sanction
 3 hearing to be the first available date in January in
 4 the new term. Are there any comments on that
 5 timetable? I will obviously hear the individual
 6 investors, but I would like comments from counsel
 7 first.
 8 MR BOMPAS: My Lady, what has been pointed out
 9 to me is that the voting form will actually probably
 10 qualify as the giving of the votes by many, many,
 11 many of the investors. Although there is the Scheme
 12 meeting, the voting on the Scheme technically will
 13 take place, at the moment, on the 15th. So, what
 14 those instructing me suggested was that the deadline
 15 for the submission of the voting forms should go
 16 back, while the Scheme meeting could stay on the
 17 15th.
 18 MRS JUSTICE BACON: What date are you asking
 19 for? 1 December? The 1st is the Friday, is it not?
 20 MR BOMPAS: Yes, my Lady, it would either be
 21 the Friday the 1st, or it would be Monday the 4th.
 22 MRS JUSTICE BACON: All right. I think Friday,
 23 1 December, because then that gives two weeks before
 24 the Scheme meeting. Just— All right.
 25 MS TOUBE: My Lady, the point that has been

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1 made from behind me is sort of the flipside of the
 2 point that my learned friend is making, which is we
 3 do not need such a long time between the deadline to
 4 submit the votes and the meeting. So, I do not
 5 think we would have a problem with the deadline to
 6 submit votes being moved to, say, 1 December, but
 7 the meeting itself could be a week earlier. I know
 8 none of this is going to help us to get a sanction
 9 hearing earlier, because that is in any event going
 10 to have to be January, but it would at least allow
 11 us to start putting together the documents, the
 12 Chairman's report and all the rest of it.
 13 MRS JUSTICE BACON: Yes, I see, and I am
 14 mindful of the Christmas vacation. Well, Mr Bompas,
 15 what about bringing forward the date of the Scheme
 16 meeting in light of that comment?
 17 MR BOMPAS: Well, I was actually, my Lady,
 18 going to suggest the other way round: put the voting
 19 form to 4 December and leave the Scheme meeting on
 20 the 15th. Then, (inaudible) we will try work to get
 21 18 January, if that is suitable.
 22 MRS JUSTICE BACON: So, you are saying that the
 23 real issue for your clients and other investors is
 24 the date for the voting form?
 25 MR BOMPAS: Correct.

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1 MRS JUSTICE BACON: Would the company have a
 2 problem with the voting form going in on the 4th,
 3 which is just the other side of the weekend, and
 4 then keeping the Scheme meeting on the 15th? I know
 5 that is not going to help you with getting the
 6 Chairman's reports and everything together, but
 7 there is the whole of the following week before
 8 Christmas, and then there you are going to get at
 9 least two weeks into January.
 10 MS TOUBE: So, I think, if that is what your
 11 Ladyship wishes to order, that is what we will have.
 12 So: 18 October for comments on the documents; 20
 13 October, notice of the meeting with all the
 14 documents going out; 4 December, the deadline to
 15 submit votes; 15 December, the meeting; and then
 16 the— whatever date it is in January — 18th if we
 17 can get it — for the sanction hearing. The only
 18 thing that— We can live with that timetable, I
 19 should say. The only thing that we would like to be
 20 able to do is that, if any person is going to raise
 21 points at the sanction hearing, it would be good to
 22 build in dates prior to that hearing for people to
 23 raise their grounds of opposition, put in evidence,
 24 and then put in proper submissions before the
 25 hearing, because whoever hears the sanction hearing,

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1 I think, will wish to avoid a lot of last-minute
2 documents and emails.

3 MRS JUSTICE BACON: Yes. Well, can I deal with
4 that as a matter of directions after I have heard
5 from the individual investors? Because I am aware
6 that they have come here, they want to make
7 submissions.

8 MS TOUBE: Absolutely.

9 MRS JUSTICE BACON: They have heard what we
10 have had to say. The timetable, now, has been
11 revised to give them, I think, considerably more
12 time, which I hope will alleviate some of the
13 concerns, and there will then be the period over
14 Christmas for them to consider whether to object to
15 sanction on grounds of fairness if the Scheme has
16 been approved at the court meeting. So, let me see.
17 Mr Bompas, your comments only addressed the
18 timetable. Was there anything else that you want to
19 say?

20 MR BOMPAS: Well, what I think— I flag up the
21 point about what I say is the mismatch between
22 Scheme Creditors and investors holding units or
23 shares. My learned friend has addressed your
24 Ladyship on that. I am not going to take time
25 dealing with the point before your Ladyship, as your

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1 Ladyship wishes, but I actually, for my own part,
2 consider the submission made mistaken, that there is
3 an issue, and I would hope that we can bottom that
4 out with Clifford Chane.

5 MRS JUSTICE BACON: Yes, well, you can have
6 more dialogue and that can then be brought back
7 before the court at the sanction hearing.

8 MR BOMPAS: Well, but fundamentally this is a
9 problem with those promoting the Scheme rather than
10 the court resolve at this stage.

11 MRS JUSTICE BACON: Yes, all right. Thank you
12 very much, Mr Bompas. Now, who else do I need to
13 hear from now? Are there any other investors that
14 want to make specific comments too? That is Mr
15 Agathangelou and Mr Bishop. Who is going to go
16 first?

17 MR AGATHANGELOU: I will, my Lady, thank you.

18 MRS JUSTICE BACON: And you are?

19 MR AGATHANGELOU: My name is Andy Agathangelou.
20 Would you like me to speak from here, my Lady, or go
21 somewhere else?

22 MRS JUSTICE BACON: Well, is there any problem
23 with the audio if you speak from there? Because I
24 do not think that there are any microphones, so
25 perhaps you could just come forward and find

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1 yourself in the vicinity of a microphone so that
2 those— I can see that the space is being made for
3 you on the front bench. Can you just comment
4 briefly— This is not an opportunity for you to
5 tell the court all your concerns about the fund or
6 points that may be relevant to whether or not
7 investors are going to vote in favour or against the
8 Scheme. All I want to hear from you now, and all
9 that is appropriate for you to make submissions on
10 now, is the process going forward.

11 SUBMISSION by Mr AGATHANGELOU

12 MR AGATHANGELOU: Thank you, my Lady. Thank
13 you very much, my Lady, for the opportunity to
14 speak. If I may share frankly with yourself and the
15 court the general sentiment amongst many investors
16 about the process thus far, and therefore about the
17 process moving forward.

18 MRS JUSTICE BACON: Well, I think we just— In
19 the time available— This hearing has to finish at
20 one. Let us concentrate on the process going
21 forward, and rather than making general concerns,
22 please can you make specific proposals about what I
23 have just ordered?

24 MR AGATHANGELOU: Thank you. In general terms,
25 what we would like to see as investors is a far

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1 greater degree of investor participation in the
2 process. We believe there are several points, that
3 my colleague Mark Bishop will elaborate on shortly,
4 that are absolutely vital to be done correctly to
5 help ensure that the process is and is seen to be
6 fair, and without sufficient investor
7 representation, there is, we believe, my Lady, a
8 real risk that we'll get to the sanction hearing and
9 tens of thousands of people will look back at what's
10 happened and feel uncomfortable about the degree of
11 fairness. What investors are looking for is an
12 opportunity to ensure that their concerns are
13 adequately dealt with.

14 Now, of course, there has been an Investor
15 Advocate in position, as you will have heard from
16 the sentiments expressed on Tuesday, my Lady. The
17 role of the Investor Advocate, of course, is not to
18 champion the investor. Also, my Lady, there is the
19 Investor Committee, and we've had no line of sight
20 at all, frankly, on the inputs of the Investor
21 Committee. I do believe they will be publishing a
22 report after the decision today has been made.
23 Therefore, in very straightforward terms, my Lady,
24 we need a part of the system in the process that
25 adequately champions the true interests of the

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1 investors, and of course, my Lady, there are perhaps
 2 as many as 100,000 people who are literally
 3 unrepresented because, for example, they're not part
 4 of the Leigh Day class or the Harcus Parker class,
 5 and we know, my Lady, from a meeting that was held a
 6 couple of days ago with over a hundred investors who
 7 are genuinely concerned about the levels of
 8 transparency around the entire process, and of
 9 course, if there is a lack of transparency, the
 10 feeling is that there is a lack of fairness. What
 11 we're essentially asking for is the opportunity for
 12 investors' concerns to be properly championed by
 13 investors. Thank you, my Lady.

14 MRS JUSTICE BACON: Can I just ask, how do you
 15 say that that should be dealt with in the order that
 16 I am going to be making today? So, starting with
 17 the timetable, are you content with the timetable
 18 that I have just thrashed out with counsel?

19 MR AGATHANGELOU: Yes, we are, my Lady. What
 20 we would like to see, however, is a third group
 21 constituting of a small number of individuals who
 22 are absolutely dedicated to championing the
 23 representation of the investors. They would work
 24 alongside and in partnership with the Investor
 25 Advocate and the Investor Committee, but they would

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1 be free to have their own thoughts that they would
 2 be free to express directly to the court. We think
 3 this is a very pragmatic approach, and it will
 4 significantly advance the effectiveness of the
 5 process.

6 MRS JUSTICE BACON: When you say you would like
 7 to express those views to the court, you presumably
 8 mean at the sanction hearing in January?

9 MR AGATHANGELOU: At the sanction hearing in
 10 January, but also in the process between now and
 11 then.

12 MRS JUSTICE BACON: There is no court
 13 involvement in the process between now and then?

14 MR AGATHANGELOU: In the interaction with the
 15 other parties involved in the process, my Lady. I
 16 clearly am not legally trained, you'll appreciate
 17 that, that's very clear to you. We are simply
 18 asking for a pragmatic opportunity to feed in
 19 thoughts and ideas, and frankly, concerns to help
 20 ensure that everybody can look back at the end of
 21 the sanction hearing and feel that the process has
 22 been fair. At the bottom of p.14, my Lady, of the
 23 Investor Advocate report, there's reference to the
 24 importance of this process being seen to be fair.
 25 At the top of p.15, my Lady, on the Investor

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1 Advocate report, it makes reference to the idea that
 2 there should not be a blot on the Scheme, a blot,
 3 and we currently feel that the blot on the Scheme is
 4 that it is not sufficiently fair, and my colleague
 5 Mark Bishop will elaborate on some detail around
 6 that, and when he speaks, he'll be talking about
 7 ideas that cannot be put right today, my Lady, but
 8 could be put right if a third cohort representing
 9 the interests of true investors was established and
 10 invited to be part of the process. We think that
 11 would mean we could look back on things in months to
 12 come, and at least everybody could feel the process
 13 has been fair. Thank you, my Lady.

14 MRS JUSTICE BACON: Thank you very much, Mr
 15 Agathangelou. So, I will hear from Mr Bishop now,
 16 thank you, and again, Mr Bishop, just to reiterate,
 17 I do not want to hear submissions on points that go
 18 to the ultimate fairness at the sanction hearing.
 19 What I want to deal now is procedural points,
 20 process, how we manage the process going forward.

21 MR BISHOP: Thank you. I stress I'm not
 22 legally qualified, but I will make the distinction
 23 as best I can.

24 MRS JUSTICE BACON: Of course.
 25 SUBMISSIONS by Mr BISHOP

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1 MR BISHOP: There are three areas I'd like to
 2 deal with. The first one is to do with the
 3 Explanatory Statement. One point that I think has
 4 not been sufficiently recognised in proceedings so
 5 far is that those private investors who signed up to
 6 the various group litigations constitute, at most,
 7 20 per cent of the totality. Therefore, 80 per cent
 8 of the totality are not covered. We think that the
 9 only communications they're likely to have received
 10 so far are a small number of communications from
 11 platforms. We think that statements have been
 12 downloaded perhaps around 20,000 times, and what's
 13 been published on the FCA's website— and hopefully,
 14 of those 20,000, many of them have read the practice
 15 statement letter.

16 We believe that what they received, at the
 17 moment, is quite significantly inadequate in
 18 relation to the depiction of the restitution order,
 19 which for those 80 per cent, is the only
 20 counterfactual really available to them, and you've
 21 talked— I'm very grateful, my Lady, that you have
 22 raised the issue of the Warning Notice. We do
 23 agree, from our reading of the document— we're not
 24 lawyers— that it isn't possible to release it in
 25 its entirety. Even with the permission of the

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1 parties, it seems that they cannot publish it, but
 2 as you rightly observed, they can publish a very
 3 detailed summary, which may be very similar in
 4 substance and content. We'd just like to stress
 5 that we think it's really important that it is
 6 detailed and that the summary is accurate because,
 7 particularly in respect to the Financial Conduct
 8 Authority, I'm sure you're aware there have been
 9 cases, not least its summary of the s.166 report
 10 into RBS and the alleged banking misconduct towards
 11 small businesses, where a published summary turned
 12 out subsequently to be inaccurate because somebody
 13 had leaked the full report. I'm not at all
 14 suggesting that would happen here, but I think the
 15 quality of that summary is important.

16 I also think there's an issue with the Final
 17 Notice, my Lady. I'm not aware of any legal
 18 restrictions on those things being published.
 19 Obviously, the FCA would need to get the permission
 20 of the parties mentioned in it to provide
 21 information under s.348 of FSMA, but I would have
 22 thought that Link would agree to that if it was
 23 wanting information to be put into the explanatory
 24 notice— Explanatory Statement, so hopefully, that
 25 can be done. Also, I notice that it is intended

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1 currently that the Final Notice will in any case be
 2 published if the scheme is proved, so if they can
 3 publish it then, why not publish it now so that it
 4 could be of use to people?

5 MRS JUSTICE BACON: Well, there is a
 6 distinction between the Warning Notice, which is
 7 protected from publication, and the Decision which
 8 is not.

9 MR BISHOP: Of course, so what we're arguing
 10 is, would it be possible to publish the Decision
 11 Notice — the Final Notice, as it's called — before
 12 people get to vote on the Scheme? Because they
 13 would then be able to judge the quality of the case
 14 that the FCA has against Link.

15 MRS JUSTICE BACON: Well, I think that is not
 16 going to be possible, because it is part of the
 17 settlement agreement that will not be done until
 18 after the Scheme has been sanctioned, because if the
 19 Scheme is not sanctioned, then everything would be
 20 contested vigorously by LFSL. If it is sanctioned,
 21 then they will effectively let this go through
 22 without contesting it, but without an admission of
 23 liability. Their position depends on whether a
 24 sanction is given or not. That is why there is that
 25 distinction made, and why, as far as I understand it

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1 — and of course, the FCA can correct me on that — it
 2 is not possible for the final decision to be adopted
 3 before the sanction of the scheme.

4 MR BISHOP: Okay, thank you. I understand that
 5 that may be the case, and in that case, I'll just
 6 leave on the table the question of whether it's
 7 possible to publish a full and extensive summary.

8 MRS JUSTICE BACON: More detail of the Warning
 9 Notice.

10 MR BISHOP: Exactly. Also, are there any legal
 11 opinions that the FCA has sought about the likely
 12 prospects of a restitution order that it could
 13 publish? I don't know the answer, but if there is,
 14 I think that would be very helpful to that 80 per
 15 cent or thereabouts of investors. The second area
 16 that I'd like to raise is about participation
 17 levels. We're all aware that there is fundamentally
 18 a structural problem with this Scheme arrangement
 19 vote, which is that, in an ideal world, Link would
 20 be writing to the underlying investors, but the
 21 platforms are not allowed to give them, under GDPR,
 22 the contact details of those investors, so they
 23 cannot do it. We don't know how much effort the FCA
 24 will put into encouraging platforms to circulate the
 25 message or when they will do it, and absolutely

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1 rightly, my Lady, you've emphasised the importance
 2 of it. I wonder whether it's worth having, as well
 3 as a carrot on a stick, which is perhaps— I don't
 4 know whether you have the right to impose some
 5 minimum participation level for the vote to be
 6 deemed to be valid. In other words, of all of the
 7 universal investors, particularly private investors,
 8 is it possible that you can require a certain
 9 percentage of them to actually participate?

10 MRS JUSTICE BACON: Well, that is an issue for
 11 the sanction hearing.

12 MR BISHOP: Okay.

13 MRS JUSTICE BACON: If there is a concern about
 14 participation, that is typically an issue that is
 15 raised after the sanction hearing, and of course,
 16 you would be able to make submissions on that if
 17 there is a very, very low participation.

18 MR BISHOP: Thank you, and then the final issue
 19 I'd like to raise— this is something which, as
 20 non-lawyers, we are not clear about, so I apologise
 21 in advance if there is clarity of the answer. I
 22 believe that approximately 15 per cent, by value of
 23 the fund, was held at suspension by another fund,
 24 the Hargreaves Lansdown Multi-Manager Fund, known as
 25 MMF. That fund, of course, has a number— a very

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1 large number of private investors in it. It's
 2 unclear to us whether and how there will be voting
 3 in respect of this holding. Will Hargreaves
 4 Lansdown, the fund's manager, vote as it sees fit
 5 and be deemed an institutional investor, or will it
 6 make an effort to contact the underlying investors
 7 in that fund? There is a related issue, my Lady, at
 8 risk of complicating matters more significantly,
 9 which is, of course, this is an open-ended fund, and
 10 it's been trading ever since the Link Fund was
 11 suspended back in 2019. Its investors today are
 12 very different than its investors were when the
 13 gating occurred. Which group of people would vote?
 14 And also, which group-----
 15 MRS JUSTICE BACON: We are talking about the
 16 Hargreaves Lansdown-----
 17 MR BISHOP: Yes, in the Hargreaves Lansdown
 18 fund, my Lady, their investors today will mostly be
 19 different people than the investors four and a third
 20 years ago, and who will receive the money as well?
 21 Will the money go to the people who were investors
 22 when the fund was gated, or the people who are
 23 investors now, many of whom may not have been
 24 subject to that gating? It's a complex issue.
 25 MRS JUSTICE BACON: Thank you very much. Thank

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1 you to both you and Mr Agathangelou for your written
 2 submissions and your oral submissions. I am now
 3 going to give the company, and insofar as
 4 appropriate others, a chance to respond to those.
 5 Thank you. So, Ms Toube, do you want to run through
 6 the points raised by the two individual investors?
 7 Oh, actually, perhaps before I do so, can I just
 8 say, is there anybody else who is wanting to make
 9 submissions on the part of the individual investors?
 10 MR AGATHANGELOU: My Lady, forgive me, one
 11 further thought. You posed a question to me about
 12 what the practicalities could be about some
 13 additional representation from investing, and it's
 14 just occurred to me, in response to you on that
 15 point, that perhaps there could be some additional
 16 representatives from investors on the Investor
 17 Committee. There therefore would not need to be an
 18 additional entity created, there would simply be
 19 better representation of people like us and the
 20 people we represent on that committee. Thank you.
 21 MRS JUSTICE BACON: All right. Thank you, that
 22 is a helpful suggestion. Can I just check there is
 23 nobody else who wants to make submissions? No? All
 24 right, Ms Toube.
 25 SUBMISSIONS in reply by MS TOUBE

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1 MS TOUBE: So, in relation to the Investor
 2 Committee, there is no further role for that
 3 committee going forwards, so it will not be doing
 4 anything. It did, of course, ask for people to sit
 5 on it, and had a good representation from individual
 6 investors, and its report has already been
 7 published, as your Ladyship knows, so that is
 8 already out there. Insofar as the investors want to
 9 discuss with each other or band together, that is
 10 really a matter for them. I do not think that we
 11 can build in any further position for them. It is
 12 now a matter for the scheme creditors how they
 13 choose to vote.
 14 MRS JUSTICE BACON: No, and I understand your
 15 point is that, if they want to get together as a
 16 group and make submissions as a group and discuss as
 17 a group and decide and enable all of those in the
 18 group to discuss how they wish to vote, and indeed,
 19 to come together as a group to make representations
 20 at the sanction hearing, they can actually do that.
 21 There is nothing which stops them from doing that.
 22 MS TOUBE: No, nothing at all.
 23 MRS JUSTICE BACON: No.
 24 MS TOUBE: So, I think that is the point in
 25 relation to that. The point in relation to the FCA

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1 you have already heard submissions on before, so I
 2 do not think I need to deal with that again. In
 3 relation to the question of participation, as your
 4 Ladyship rightly says, that is going to be a matter
 5 for sanction. Insofar as it was suggested, I think,
 6 in a couple of the submissions I have seen --
 7 although I still have not seen Mr Pyatt's additional
 8 emails -- that somehow the statutory voting
 9 thresholds could be changed, they cannot. The
 10 statute says 75 per cent of those by value voting at
 11 the meeting, so the court can, as your Ladyship
 12 rightly says, look at participation, but it cannot
 13 adjust the statutory levels.
 14 MRS JUSTICE BACON: No, it is then a matter of
 15 the discretion of the court as to whether to
 16 sanction the scheme.
 17 MS TOUBE: Absolutely right.
 18 MRS JUSTICE BACON: Between considerations of
 19 fairness and whether there is some block or defect
 20 in the scheme.
 21 MS TOUBE: Absolutely right. The point in
 22 relation to Hargreaves Lansdown-- I think that is
 23 two points, as a potential target of a third-party
 24 claim, and as potentially being able to vote. That
 25 conflict point we did deal with in our skeleton at

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1 para.84, and your Ladyship may recall that there is
 2 actually no conflict because there is no release of
 3 the claim against Hargreaves Lansdown, so Hargreaves
 4 Lansdown cannot vote on a particular way to avoid a
 5 claim being made against it because the Scheme does
 6 not stop that claim being made. The second point, I
 7 think, was who is the right person to vote, and that
 8 is going to be a question of the underlying contract
 9 between the investor and the platform. When the
 10 votes are cast, they will have to be scrutinised to
 11 make sure that they are being cast by the right
 12 person, and if Hargreaves Lansdown is under the
 13 contract with the investor, the right person, then
 14 they can vote and if not they are not.

15 MRS JUSTICE BACON: Yes-----
 16 MS TOUBE: So I am not sure what else we can do
 17 on that.

18 MRS JUSTICE BACON: Yes, so if I can then
 19 summarise for the benefit of the investors who are
 20 here and those who are online. The last suggested
 21 solution of adding people to the investor committee
 22 will not work because they are effectively functus.
 23 There is not any further role for them in the
 24 process going forward, but insofar as the investors
 25 want to group together, in however many groups, to

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1 make submissions on the Explanatory Statement before
 2 the 18th and then thereafter too to meet together
 3 and consider the materials so that the individual
 4 investors can decide how to vote, and then
 5 thereafter, after the court meeting, to make any
 6 submissions as a group to the court at the sanction
 7 hearing they are free to do so; nothing prevents
 8 them from doing so.

9 MS TOUBE: Yes, my Lady.
 10 MRS JUSTICE BACON: And I do not need to make
 11 any order at that stage, because they can group
 12 together in as many or as few groupings as they
 13 want. To do that, the court will, of course,
 14 consider submissions from the investors if they want
 15 to at the sanction hearing. Of course, I think it
 16 would be more useful to the court if submissions are
 17 made on behalf of a group of investors rather than
 18 lots of submissions to the same effect being made by
 19 individual investors, but that is a matter for them.
 20 All right, so that is your position. Does anyone
 21 else, Mr Bompas, Ms Cook or Mr Smith, want to say
 22 anything about those issues that have been raised by
 23 Mr Agathangelou and Mr Bishop? No? Mr Bompas.

24 MR BOMPAS: I have got a point on costs in the
 25 order, but that is my only remaining point, I think.

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1 MRS JUSTICE BACON: All right, okay. So, I
 2 think you have had the answer, Mr Agathangelou and
 3 Mr Bishop. You are free to constitute yourself as a
 4 group or several groups of investors, discuss
 5 between yourselves, make submissions on the
 6 Explanatory Statement before the deadline of next
 7 Wednesday, and to come to the court at the sanction
 8 hearing to make submissions, assuming that this
 9 Scheme is approved. Yes, Mr Agathangelou.

10 MR AGATHANGELOU: My Lady, thank you. May I
 11 just check something? Am I right in hoping that we
 12 would not need to create some legal entity like a
 13 company? For example, if there is already what we
 14 could term-----

15 MRS JUSTICE BACON: No, you do not need to-----
 16 MR AGATHANGELOU: -- to be a Woodford Campaign
 17 Group, could the Woodford Campaign Group be that
 18 relevant (inaudible) for example?

19 MRS JUSTICE BACON: You do not need to create
 20 any legal entity. I mean, I could simply hear
 21 submissions from a couple of individuals
 22 representing and, in an informal way, a group of
 23 investors, or you could do it through a campaign
 24 group.

25 MR AGATHANGELOU: Okay. Thank you very much,

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1 my Lady.

2 MRS JUSTICE BACON: As I said, it is more
 3 useful to the court if submissions are grouped
 4 together rather than that I hear lots of individual
 5 submissions.

6 MR AGATHANGELOU: Thank you, my Lady.

7 MRS JUSTICE BACON: All right, thank you, and
 8 so I need to deal with costs.

9 MR BOMPAS: My Ladyship, I had a brief
 10 conversation with my learned friend this morning,
 11 and there is a certain amount of learning on the
 12 question of costs of parties, such as myself, on a
 13 hearing such as this, but one of the ways of dealing
 14 with that is to reserve the costs, and that is what
 15 I think--- I hope has been agreed, but arising out of
 16 that is going to be the form of order. At the end
 17 of a form of order, para.19 gives the company
 18 liberty to restore rather, and para.20 has an
 19 automatic restoration if the Scheme is approved.
 20 There is just the possibility that the Scheme might
 21 fail, you see, on the voting, and then there would
 22 be the question of costs which would need to be
 23 restored. So what I would be proposing is that the
 24 order should be amended to reserve the costs of the
 25 represented parties before your Ladyship.

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1 MRS JUSTICE BACON: Of costs reserved
 2 generally?
 3 MR BOMPAS: And then with the liberty to
 4 restore made general rather than limited to the
 5 company. So in the event that the costs do need to
 6 be sorted out, other than at the sanction hearing
 7 there is a plain way of doing it.
 8 MRS JUSTICE BACON: Is 19 not doing it? Well,
 9 I mean, if you think that 19 does not do it-----
 10 MR BOMPAS: It would not give my clients
 11 liberty to restore if the company did not.
 12 MRS JUSTICE BACON: No. All right.
 13 MR BOMPAS: I mean, I can understand why it may
 14 have been put in there, but-----
 15 MRS JUSTICE BACON: No, so you just want
 16 liberty to apply generally for further-----
 17 MR BOMPAS: Correct, correct.
 18 MRS JUSTICE BACON: -- directions on this
 19 matter? That seems to me to be the case.
 20 MR BOMPAS: And then the other point, which I
 21 think was raised, which may be outstanding, is
 22 whether your Ladyship is to give directions for
 23 submissions-----
 24 MRS JUSTICE BACON: Yes.
 25 MR BOMPAS: -- before the hearing?

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1 MRS JUSTICE BACON: All right. Is liberty to
 2 apply generally and cost reserved agreed?
 3 MS TOUBE: Cost reserved is agreed. Yes. I
 4 think as long as it is clear that the liberty to
 5 restore is in relation to the cost question, we do
 6 not have a problem in relation to that.
 7 MRS JUSTICE BACON: Is it in relation to the
 8 cost question?
 9 MR BOMPAS: That is what I had in mind,
 10 specifically .
 11 MRS JUSTICE BACON: Yes. All right, then you
 12 will then insert the appropriate wording in the
 13 draft order. So-----
 14 MS TOUBE: So, the draft order is going to have
 15 to be amended to change the dates, in any event?
 16 MRS JUSTICE BACON: Yes, and then directions.
 17 MS TOUBE: Yes, so I was trying to work out
 18 working backwards from the hearing. The first thing
 19 I can tell your Ladyship is that we have moved the
 20 hearing to 18 January.
 21 MRS JUSTICE BACON: All right, so someone has
 22 discussed with the court, so that is going to be the
 23 18th.
 24 MS TOUBE: Yes, so the court has now moved it
 25 for us. Working back from that then, skeleton

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1 arguments, that is a Thursday, I should say.
 2 Skeleton arguments should be 4 p.m. on Monday 15.
 3 MRS JUSTICE BACON: That seems sensible.
 4 MS TOUBE: Bundles should be 4 p.m. on Friday
 5 12.
 6 MRS JUSTICE BACON: Yes.
 7 MS TOUBE: Now, the other thing we need to deal
 8 with is grounds of opposition, and that, I should
 9 emphasise, your Ladyship may or may not have seen
 10 these before, but usually it is a sort of very
 11 high-level position paper, these "I'm going to take
 12 a point on fairness based on the X plan." So it is
 13 not a mini skeleton, and it is possible that there
 14 might be some evidence that might need to be served
 15 with that. I suspect in this case there will not
 16 be, but there might be. So, we would need grounds
 17 of opposition and evidence in support of that, and
 18 we would need some reply evidence. So what we
 19 thought might work is, with the meeting on 15
 20 December, the grounds of opposition and any evidence
 21 in support could come in on 21 December, and that
 22 will mean the result of the meeting is known and
 23 this high-level document can be produced, and then
 24 the reply evidence can come in on 11 January, so
 25 just before the bundles.

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1 MRS JUSTICE BACON: Well, that does not give
 2 very much time for anyone want to put in skeleton
 3 arguments?
 4 MS TOUBE: Well, if it is much earlier, then it
 5 is all the way across Christmas.
 6 MRS JUSTICE BACON: What about the 9th?
 7 MS TOUBE: I am hopeful there will not be any
 8 evidence at all, but yes, I think we can do the 9th.
 9 MRS JUSTICE BACON: Yes. I mean, I am aware
 10 that that still already falls within the court
 11 vacation, but-----
 12 MS TOUBE: It does.
 13 MRS JUSTICE BACON: -- one would hope that it
 14 gives sufficient time for everybody who has been on
 15 their individual vacations to deal with that. All
 16 right, so the proposal is then starting with the
 17 court meeting; the court meeting will be on the
 18 15th; grounds of opposition and evidence and support
 19 on the 21st, which is the last day of term; reply
 20 evidence on 9 January, which does fall within the
 21 vacation but hopefully that will give enough time;
 22 and bundles on the 12th; skeletons on 15 January.
 23 Does anybody wish to dispute that timetable?
 24 MR BOMPAS: My Lady, what I would caution is
 25 this, that the results of the meeting may not be

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1 known immediately upon the conclusion of the
2 meeting, and the date of 21 December was premised on
3 the result of the meeting being known on the 15th.
4 Now, it is probable that the result will be known
5 swiftly, but there has to be the possibility that
6 this counting of votes takes longer and the result
7 of the meeting is pushed back.

8 MRS JUSTICE BACON: How could it take longer?
9 I presume it is going to be done through— At least
10 if it is a hybrid meeting, almost all the votes will
11 be electronic.

12 MR BOMPAS: Well, one would hope so. I am only
13 repeating what was suggested in the Explanatory
14 Statement and the papers before the court.

15 MRS JUSTICE BACON: Well, how could it take
16 longer than 15 December for the result to be known?

17 MS TOUBE: The answer is, normally it does not,
18 but in this case, we would have to check that the
19 votes are by the right people. So the only way to
20 deal with this might be to move the meeting back
21 from 15 December and keep 21 December, because
22 otherwise we cannot keep 18 January as a sanction
23 meeting.

24 MRS JUSTICE BACON: Yes. I do not want to move
25 18 January. So Mr Bompas, if you wanted that, we

1 could to move the meeting back to, say, the 13th?

2 MR BOMPAS: Those instructing me are content
3 that the Scheme meeting itself should be held on the
4 13th.

5 MRS JUSTICE BACON: Right, so the meeting will
6 be held on the 13th. Then is there any reason why
7 it would take more than two days to count the votes?

8 MS TOUBE: So, I am being told by one of the
9 proposers— well, one of the Scheme supervisors that
10 the answer is not normally, probably it would be
11 fine-----

12 MRS JUSTICE BACON: Yes.

13 MS TOUBE: -- but he cannot guarantee it,
14 because it, as I say, if people are putting in
15 screenshots and the sorts of issues my learned
16 friend come up-----

17 DIRECTIONS

18 MRS JUSTICE BACON: Yes.

19 MR BOMPAS: Yes.

20 MRS JUSTICE BACON: So, that is then recorded
21 now, because obviously, if the outcome is not known
22 by the 15th, it is unrealistic to ask for grounds of
23 opposition, and evidence and support to be put in on
24 the 21st, and then we would have to revisit the
25 timetable.

1 MS TOUBE: Yes and no is the answer to that. I
2 hear what your Ladyship says, but obviously, if the
3 outcome of the meeting is that it does not pass,
4 then no evidence needs to go in at all.

5 MRS JUSTICE BACON: Yes. I am sorry, yes.
6 Depending under the circumstances, depending on what
7 is known on the 15th, it may be unrealistic.

8 MS TOUBE: Yes. Understood.

9 MRS JUSTICE BACON: And the company will have
10 to take a view, and obviously, if that view is
11 disagreed with by everybody else, then that would be
12 a matter for the court of sanction hearing, and if
13 they have not had time to put in their grounds of
14 opposition and so on. Is there anybody here who
15 wants to comment on the timetable that has just been
16 proposed? No? All right. Is there anything else
17 that I need to deal with, apart from saying that I
18 hope to get a draft order by the end of the day?

19 MS TOUBE: No, my Lady, and we will do our best
20 to do that.

21 MRS JUSTICE BACON: All right. Anything else,
22 Mr Bompas?

23 MR BOMPAS: No.

24 MRS JUSTICE BACON: No. All right. Thank you
25 very much.

1 (1.00 p.m.)

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