ALERTER

Are You Not En(ter)tain-ed? A New Approach to Case Managing Claims Under s. 90A FSMA

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INTRODUCTION

In *Various Claimants v Entain Plc* [2026] EWHC 1622 (KB) (**"Entain"**), the High Court (Trower J) has given judgment in what may become the leading decision on the case management of group claims brought under s. 90A of the Financial Services and Markets Act 2000 (**"FSMA"**).

Entain is the latest skirmish in the long-running case management battle between shareholder claimant groups and share issuer defendants. That battle centres on when, and in what order, the elements necessary to establish liability under s. 90A should be determined.

The decision marks a return to favour for the split preferred by the claimants: Trower J held that Trial 1 would determine defendant-side issues, whereas the reliance element of the statutory tort will be postponed to Trial 2, decreasing the litigation burden on the claimant groups and delaying the determination of the nature of the reliance requirement under s. 90A.

What the claimant group must prove to establish reliance in a s. 90A context has been in a state of some uncertainty – at least with respect to common reliance – since the Privy Council decision in Credit Suisse Life (Bermuda) Ltd v Ivanishvili & Others [2025] UKPC 53 (**"Ivanishvili"**).[1]

FACTUAL BACKGROUND

The essence of the allegations made by the claimants in *Entain* is that the company published information and prospectuses contained misleading statements and/or omitted to disclose relevant information relating to bribery in respect of its business and that this was done with the knowledge of Persons Discharging Managerial Responsibility (**"PDMRs"**). The claim is advanced on the basis of both s. 90 FSMA (relating to prospectuses) and s. 90A FSMA (relating to other published information), although it was not suggested by the parties that the differences between the two claims affect case management.

The shareholder claim under s. 90A FSMA arises from an alleged drop in Entain Plc's share price occasioned by the revelation of these allegations. There are parallel criminal proceedings ongoing against certain of the PDMRs involved at the relevant times, for which reason the High Court has made a Reporting Restriction Order (**"RRO"**) and a Filing Modification Order (**"FMO"**), limiting the extent to which details of the case and pleadings are accessible in the public domain: *Various Claimants v Entain PLC* [2026] EWHC 1511 (Comm).

BACKGROUND TO THE CASE MANAGEMENT OF S. 90A FSMA CLAIMS

As readers of this alerter will be aware, the elements which claimants must prove to establish liability under s. 90A are: (1) the standing of the claimants as shareholders, (2) the existence of dishonest statements, omissions or the delayed provision of information by the defendant share issuer, (3) the knowledge of PDMRs that the statements/omissions are dishonest or are reckless as to their falsity, or that the delay is dishonest, (4) reasonable reliance by the claimants, and (5) causation of loss. It is now well-established that determining the liability of a share issuer under s. 90A FSMA to a claimant group or groups requires a split trial, dividing these five elements into two parts.

In three earlier cases, the decision of Miles J in *Allianz v RSA Insurance* [2021] EWHC 570 (Ch) (**"RSA"**), Falk

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J *Various Claimants v G4s Ltd* [2022] EWHC 1742) (Ch) (**"G4S"**), and Michael Green J in *Various Claimants v Standard Chartered Plc* [2024] EWHC 1108 (Ch), it had been held (in what was perceived as a 'claimant friendly' line of case management) that the reliance element should be postponed to Trial 2, thereby easing the litigation burden on the claimant class, improving prospects of settlement, and generally making the trial of such cases more practical.
Then came the decisions of Leech J in *Investors in Barclays v Barclays Plc* [2024] EWHC 2124 (**"Barclays"**) and Michael Green J in *California State Teachers' Retirement System et al v Boohoo* [2026] EWHC 335 (Comm) (**"Boohoo"**). In these cases it was held that the right place to determine the reliance element was (so far as possible) Trial 1. The pendulum swung in favour of defendant share issuers.

In *Barclays* at [8](3), Leech J reasoned, first, that *"it is better in principle to try all of the issues together if this can be achieved"*, and, second, that on account of the smaller size of the claimant group in Barclays determination of the reliance element could (and therefore should) be achieved in Trial 1. Leech J contrasted the Barclays case with Standard Chartered, which was, he noted, unusually large and complex, involving some 1,500 claimant investors and trial length estimated at 76 days.

In *Boohoo* at [44]-[45], Michael Green J mirrored Leech J's reasoning, holding that:

- the smaller the claimant group, the more appropriate it is to determine the reliance element in Trial 1, distinguishing his own decision in Standard *Chartered* on that basis: *Boohoo* at [44]; and
- with respect to s. 90A claims, generally, "*where reliance can be dealt with at Trial 1, and it is reasonable for the parties to be ready to do so, I think that that should be the norm*".

In view of the above, it had been thought by practitioners that *Barclays* and *Boohoo* sounded the last word in the case management of s. 90A FSMA claims.

THE *ENTAIN* DECISION

Trower J has held that the best moment to determine the reliance requirement under s. 90A FSMA claims is in Trial 2. Only elements (1)-(3) will fall for determination in Trial [1].

His decision followed submissions by the two claimant groups (the **"FW Claimants"** and **"MLB Claimants"**) that:

- each claimant will have relied in a different manner on different pieces of misleading information and at different times, giving rise to a large number of permutations as to the specific statements on which reliance is placed (*Entain* at [38]), and
- given the number of permutations involved, determining the reliance element in Trial 1 would be extremely cumbersome and may result in the evidence not addressing the precise permutations that the court ultimately decides are relevant: *Entain* at [54].

Trower J accepted these submissions [68], taking an approach to s. 90A FSMA case management which differs from Barclays and Boohoo in a number of respects.

First, unlike Leech J in Barclays, Trower J did not place "any material weight" on the time estimates for trial, which were (in his view) "speculation": Entain at [73].

Second, the size of the claimant class does not appear to have weighed heavily on his analysis. Entain Plc's submission (summarised at [59]) that the small size of the two claimant groups, 124 claimants in total, made this a case where it was possible to determine reliance in Trial 1, does not form part of the ratio of the judgment.

Third, and most significantly, Trower J's decision paid close attention to the underlying evidential requirements of the reliance requirement under s. 90A FSMA.

Trower J accepted the submission that there are likely to be different permutations of the claimants' evidence in support of the reliance element, depending on the findings made by the trial judge about the preceding elements, namely the existence of false statements and PDMR knowledge at any one time. He held at [66] that:

> *This timing issue is important, because it anchors both reliance and causation to a particular moment: reliance*

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> *because the claimants must show that, in acquiring or continuing to hold shares, they relied at a particular time on a misstatement or omission, and causation because it is relevant to the counterfactual to know what would have happened if the disclosure had been made or the delay had not occurred. This is also likely to require expert evidence on what the price would have been if the disclosure had in fact been made.*

It followed that applying his mind to the relevant criteria, namely (see [72]-[73]) the "*question of costs, practicality and the efficient and proportionate preparation of witness evidence (including experts)*", the balance tipped firmly in favour of delaying reliance to Trial.

CONCLUSION

The above analysis sets Trower J's judgment apart from *Barclays* and *Boohoo* in two key respects:

- First, there is now a clear basis for delaying judicial determination of reliance to Trial 2 in most cases under s. 90A. What the claimant group must prove it relied upon depends on findings made as to the false statement(s), the extent of PDMR knowledge, and the timing of those statements and that knowledge. Determining reliance most naturally follows only after those findings have been made.
- Second, the dicta in Barclays and Boohoo to the effect that if reliance can be determined in Trial 1, then it should be so determined, seem no longer sufficient (without more) for defendant share issuers seeking to ensure reliance is dealt with in Trial.

While Trower J's analysis is compelling, the indirect effect will be to delay judicial clarification of the nature of reliance under s. 90A FSMA, in light of Ivanishvili. Some argue that the need to do so is reason enough for determining reliance in Trial 1 – the clarity being of potential benefit to claimant groups and defendants.

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[1] Discussed in a separate article by one of the authors of this alerter: *see here*