

IN THE COUNTY COURT AT CARDIFF
HIS HONOUR JUDGE VOSPER QC
30th September 2016
BETWEEN

B94YJ831

ROGER MARSHALL
GILLIAN MARSHALL

Claimants

and

RETAIL INSTALLATIONS SERVICES LIMITED
TESCO PERSONAL FINANCE PLC
BARCLAYS BANK PLC

Defendant

Mr MacBean (instructed by Lyons Davidson Limited Bristol) for the Claimants
Mr Dillon (instructed by Eversheds LLP Birmingham) for the Second Defendant

Hearing date 23rd September 2016

Judgment

I direct pursuant to CPR Part 39 PD 6.1 that no official recording shall be taken of this judgment and that copies of this version, subject to editorial corrections, may be treated as authentic.

1. This is the trial of a preliminary issue pursuant to the order of District Judge James drawn up on 27th April 2016. The preliminary issue is “whether the transactions in question were such as to create a debtor-creditor-supplier relationship as required by section 12 Consumer Credit Act 1974”.
2. Only the Claimants and the Second Defendant have appeared at this hearing.
3. I have heard no oral evidence. The facts as set out in witness statements have been accepted by both parties. Accordingly I can summarise the background to the preliminary issue briefly.

The Facts.

4. The Claimants live at Chepstow Road, Newport. In November 2011 Mrs Marshall made an on-line enquiry with the First Defendant concerning the installation of solar panels at their house. On 26th November 2011 the Claimants placed an order with the First Defendant for work costing £11,999. The work involved the supply and installation of solar panels on the roof. On 7th and 8th November 2011 the work was carried out. It was probably subcontracted by the First Defendant to a firm called Caddy.
5. The Claimants allege that the work was defective. (The defects are not formally admitted but for the purpose of this preliminary hearing it can be assumed that at a trial the Claimants will prove defects.) Precise details of the defects are unnecessary but they relate to the fitting of the solar panels, not to the solar panels themselves. The defective work caused damage to the Claimants’ house and remedial works were necessary.
6. Payment for the work was made by credit card. That came about in the following way. On 29th November 2011, Leanne Weddell of the First Defendant telephoned Mrs Marshall and said that arrangements had been made for someone from a company called Trueshopping Limited to take details of the Claimants’ credit cards.

7. Mrs Marshall contacted Douglas Lynch, the First Defendant's installation manager, and asked who Trueshopping were. He said that the First Defendant and Trueshopping were one and the same.
8. The Claimants thereafter made payment to Trueshopping by 4 payments on 3 credit cards:
 - £5,000 on a Tesco card;
 - 2 payments totalling £4,999 on a Halifax card, and
 - £2,000 on a BHS card.
9. The First Defendant has gone into liquidation. The Claimants seek to recover the costs of remedial work to their house against the credit card issuers relying upon section 75 Consumer Credit Act 1975. The issuers behind the Halifax and BHS cards have compromised this claim but the Second Defendant, Tesco Personal Finance plc, denies liability.
10. Investigations into the First Defendant and Trueshopping have been carried out by Rebecca Butler, the solicitor for the Second Defendant. Her statement setting out her conclusions is not challenged.
11. Contrary to what Mrs Marshall was told there is no corporate relationship between the First Defendant and Trueshopping. The position is that Trueshopping sell solar panels. There is an email dated 13th November 2015 from Abbie Broadbent, an employee of Trueshopping to Laura Kavanagh, the Claimants' solicitor. The email is an exhibit to the statement of Rebecca Butler (though Mr Dillon, counsel for the Second Defendant, submits that I should treat its contents with circumspection because Abbie Broadbent was not an employee of Trueshopping at the material time and has not provided a witness statement). The email sets out the position as follows:
 - “[The First Defendant] had a field sales team which would sell the solar install and would pass the sold order to Trueshopping. We also took payment from the customers on behalf of [the First Defendant]. [The First Defendant] would install or arrange the install of the Solar Installation with a 3rd party. Trueshopping supplied the Solar kits to the [First Defendant] installers.”

12. Attached to the email is an invoice, dated 12th December 2011, which shows that the First Defendant invoiced Trueshopping for £3,305.88 and VAT (total £3,967.06) in respect of the contract with the Claimants. The invoice is said to be for “Cost of Installation; Sales Fees; MCS Certification; Administration.”
13. I am conscious that, as Mr Dillon submits, I have no witness statement from Abbie Broadbent, but plainly there was some mechanism by which the First Defendant received payment through Trueshopping and in the absence of any other explanation, there is no reason to reject this account of the relationship between those companies, supported as it is by a contemporaneous document.

The Statutory Provisions.

14. Section 75(1) of the consumer Credit Act 1974 provides:

“Liability of creditor for breaches by supplier.

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

15. Section 12 defines debtor-creditor supplier agreements. Paragraph (b) is the relevant definition.

“A debtor-creditor-supplier agreement is a regulated consumer credit agreement being—

(a)

(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or

(c)”

16. Section 11 defines restricted-use credit and unrestricted-use credit. The following are the relevant parts of section 11:

“(1) A restricted-use credit agreement is a regulated consumer credit agreement—

(a)

(b) to finance a transaction between the debtor and a person (the “supplier ”) other than the creditor, or

(c)

and “restricted-use credit ” shall be construed accordingly.

(2)

(3)

(4) An agreement may fall within subsection (1)(b) although the identity of the supplier is unknown at the time the agreement is made.”

The Submissions.

17. In the present case it is accepted that the First Defendant was the supplier of the goods and services (the solar panels and their installation). It may have been arguable that the First Defendant was a sales agent of Trueshopping but the Claimants have not put their case in that way and more evidence would probably have been needed of the relationship between the First Defendant and Trueshopping before such an argument could have been made out.

18. It was agreed that this was a restricted use credit agreement within section 11(1)(b): it was financing a transaction between the Claimants (the debtor) and the First Defendant (the supplier). The disagreement relates to the application of section 12(b): was this a credit agreement made by the creditor (the Second Defendant) under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier (the First Defendant)?

19. Mr Dillon submits that it was not. There were arrangements between the Second Defendant and Trueshopping under which Trueshopping was able to take payment by means of the card issued by the Second Defendant, but Trueshopping was not the supplier. Between the First and Second Defendants there were no arrangements, pre-

existing or contemplated. The First Defendant was a stranger to the arrangements with Trueshopping.

20. He refers to section 187 of the Act which describes certain transactions which are said to be arrangements between creditor and supplier. In summary, where corporate entities are involved, an arrangement will exist where it is between the entities themselves or between associates of the entities. Associate is defined in section 184. There is nothing to suggest that Trueshopping and the First Defendant were associates. However, these sections do not define “arrangements”.

21. Mr MacBean for the Claimants relies upon the decision of HHJ Iain Hughes QC sitting as a judge of the Queen’s Bench Division in *The Governor and the Company of the Bank of Scotland v Alfred Truman (a firm)* [2005] EWHC 583 (QB). Counsel agree that, under the rules of stare decisis clarified by the Court of Appeal in *Howard De Walden Estates Ltd v Aggio* [2008] Ch 26 [2007] EWCA Civ 499 (at paragraphs 86 to 95) and approved by the Supreme Court in *Willers v Joyce and another (re Gubay (deceased)) (no. 2)* [2016] UKSC 44 (at paragraph 5), I am bound by the decision in *Truman*. Mr Dillon however argues that it is distinguishable.

22. When the Consumer Credit Act 1974 was drafted most credit card transactions involved 3 parties: the issuer of the credit card (the “creditor” usually a bank), the merchant (the “supplier”) and the cardholder who applied for and was granted a credit card (the “debtor”). For that reason most (not all) use of credit cards involved a debtor-creditor-supplier agreement and the Act was framed accordingly.

23. Since then it has become common for these transactions to involve 4 parties. A “merchant acquirer” has intervened. The function and contractual position of a merchant acquirer is described by Waller LJ in *The Office of Fair Trading v Lloyds TSB Bank plc and others* [2007] QB 1; [2006] EWCA Civ 268 at paragraph 6:

“[Merchant acquirers] recruit new suppliers willing to accept the issuer's card. In the classic four-party structure there is interposed between the card issuer and the supplier the merchant acquirer acting as an independent party. There is an

agreement between the merchant acquirer and the supplier, under which the supplier undertakes to honour the card and the merchant acquirer undertakes to pay the supplier, and an agreement between the merchant acquirer and the card issuer, under which the merchant acquirer agrees to pay the supplier and the card issuer undertakes to reimburse the merchant acquirer. There is, however, no direct contractual link between the card issuer and the supplier.”

24. *Truman* was a case concerned with the application of the Act to this new four-party structure (though in *Truman* there was in addition a fifth party). It was not the first case to consider the point. Gloster J had considered it in the *Office of Fair Trading* case at first instance ([2005] 1 All ER 843; [2004] EWHC 2600 (Comm)). *Truman* was decided before that case was heard in the Court of Appeal. However Mr MacBean submits that the facts of *Truman* are similar to the facts of the present case.

25. The defendant, Truman, was a firm of solicitors which had entered into an agreement with the claimant bank, a merchant acquirer, under which it was able to accept payment by credit card. A client of Truman was a company called Topkarz Limited which sold cars to UK residents sourced from other European countries where the price of the cars was lower. Topkarz was not able to take payment by credit card. Accordingly, Truman agreed with Topkarz that customers of Topkarz who wished to pay by credit card could make payments to Truman, for which Truman would then account to Topkarz. A customer paid a deposit when agreeing to buy a car. Topkarz, having taken deposits from customers who had paid by credit card, failed to supply the cars and was insolvent. The customers recovered their deposits from the card issuer under section 75 of the Act. The claimant bank, as merchant acquirer reimbursed the card issuer and then sought to recover those payments from Truman under what is called a “chargeback process”. Truman resisted the claim. It follows that there were five parties in these transactions.

26. HHJ Iain Hughes QC had to consider a number of issues. He concluded that:

- 1) The contractual relationship between the customer and Topkarz was that of buyer and seller under a contract for the sale of goods.
- 2) Truman acted as the agent of Topkarz for the purpose of processing credit card transactions.

- 3) The relevant transaction for the purpose of section 11(1)(b) was the purchase of a car.
- 4) Topkarz was the supplier.
- 5) The credit agreement was a restricted use agreement within section 11(1)(b).

27. He then had to consider whether there were pre-existing arrangements between Topkarz and the card issuer within the meaning of section 12(b). He referred to paragraph 26 of the judgment of Gloster J at first instance in the *Office of Fair Trading* case where she had considered this point in the context of a four-party transaction involving a merchant acquirer. She said:

“In my judgment, in the natural ordinary sense of the word, there are clearly arrangements in place made between the card issuers and the suppliers, notwithstanding the absence of any direct communication between them, or any direct contractual relationship, or even of knowledge on the part of the issuer of the identity of the particular supplier. The fact that there are a number of different arrangements, reflecting the various roles, contractual or otherwise, played by different participants in the network, does not mean that there is not an arrangement in place between the issuer and the supplier. I consider that it is unrealistic to look merely at the individual links in the chain; rather one should stand back and look at the whole network of arrangements that are involved in the operation of the schemes. If one does so, one can, in my judgment, properly conclude that, by virtue of the supplier and the issuer being subject to the rules and settlement processes common to all participants in the card network, there is indeed an arrangement (albeit indirect) between them.”

28. A little earlier in her judgment at paragraph 24 Gloster J had said:

“There is no definition of the word "arrangements" in section 189(1) of the Act. Nor do sub-sections 187(1) and 187(2) contain a definition of "arrangements". The second half of each subsection itself uses the word "arrangements" as part of the explanation there set out. But, in my judgment, in its context it clearly betrays a deliberate intention on the part of the draftsman to use broad, loose language. It is to be contrasted with the far narrower word "agreement". In the words of Wilmer LJ in *Re British Slag Ltd's Application* [1963] 1 WLR 727, at page 739,

"Everybody knows what is meant by an arrangement". As he also said, where the word is not defined, the draftsman intends that the word should be understood and construed in its ordinary and popular sense."

29. The question which Judge Hughes QC had to consider was whether that approach applied to the five-party transaction in *Truman*. As he said at paragraph 94 of his judgment (where Truman is referred to as "the firm"):

"In the present case the merchant (the firm) and the supplier (Topkarz) are different. This is not a four-party transaction but a five-party transaction and the fifth party, Topkarz, has no contractual or other direct relationship with either the Visa or MasterCard scheme. Instead Topkarz has a contractual arrangement with the firm, as described above. Is that indirect relationship sufficient for the purposes of section 12(b)?

95. Apart from the decision of Gloster J. neither counsel nor I were able to discover another case directly on the point. In my view it does not matter that the card issuers had no direct contractual or other relationship with Topkarz or that the card issuers had no idea of the existence of Topkarz. The firm as merchant was plainly within the scheme and the contractual arrangements between Topkarz and the firm were adequate, in my judgment, to link Topkarz by a spur to the same scheme. As Gloster J. commented the word "arrangements" should be understood and construed in its ordinary and popular sense and there is evidence of a deliberate intention on the part of the draftsman to use broad loose language. It follows that a restricted construction would be contrary to the scheme of this part of the 1974 Act.

96. I am conscious that it ought not to be too easy for a merchant to avoid the chargeback system. If a scheme with a third party supplier allows a merchant to argue that there are no "arrangements" between the card issuer and the supplier, then the card holder has no rights under section 75 because there would be no debtor-creditor-supplier agreement. An important element of consumer protection would be at risk.

97. However, I recognise that there are a number of problems with my conclusion. Where is the line to be drawn? At what point does the nexus evaporate and a relationship become too tenuous even for the "broad, loose" language of this part of the 1974 Act?

98. In my view this is a problem that will have to be resolved on a case by case basis and is not really susceptible to solution by the application of a statement of general principle."

30. Judge Hughes QC went on to consider the argument (which is the same argument as Mr Dillon advances in the present case) that section 75 did not apply on the facts of *Truman* because, in order to attract the liability imposed by section 75, the credit agreement must finance a transaction between the card holder (debtor) and a supplier and be made by the card issuer (creditor) under pre-existing arrangements, or in contemplation of future arrangements, between the card issuer (creditor) and the supplier.

31. He rejected that argument. He said at paragraph 101;

"The "supplier" in section 75(1) is not necessarily the supplier in the literal sense, that is, the actual provider of the goods. Because of the definition of "supplier" in sections 11(1)(b) and 189(1), the supplier for the purposes of section 75 is the party other than the card holder (debtor) to the transaction financed by the credit agreement. In the circumstances as I have found them to be, the supplier was Topkarz, there were "arrangements" between the card issuer and Topkarz and the card holders had claims for breach of contract against Topkarz. It is those claims that by reason of section 75 the card issuers were liable to meet."

32. I do not find it easy to understand the importance of the first sentence of that paragraph. Judge Hughes QC had concluded that the supplier in this case was Topkarz. Topkarz was the supplier "in the literal sense". It was the actual provider of the goods. The real question for the purpose of section 75 was whether there were pre-existing arrangements between the card issuer and Topkarz. Judge Hughes QC had already concluded that there were at paragraph 95 of his judgment.

33. There was plainly an argument that, under the scheme of the Act, the pre-existing arrangements contemplated were the agreement between the supplier and the creditor under which the supplier accepted the credit card for payment. That the “arrangements” are confined to that agreement is however no longer arguable. The four-party structure of credit card transactions and the decision in the *Office of Fair Trading* case dispose of such an argument.
34. There was also an argument that the arrangement between Truman and Topkarz made the facts of that case very different from the arrangement between a creditor and a merchant acquirer. The creditor knows of the existence of the merchant acquirer and is in a contractual relationship with it. The creditor knows that the merchant acquirer has entered into a contractual relationship with the supplier and that the supplier is willing to accept payment by use of the creditor’s card. It is easy to conclude that these contracts amount to an arrangement between the creditor and the supplier.
35. The position of Topkarz is very different from that of a merchant acquirer. The creditor does not know of Topkarz’s existence. There is no contractual relationship between the creditor and Topkarz. Topkarz has not agreed to accept the creditor’s card. Although there is an arrangement between the creditor and Truman, it might have been arguable that, as a matter of principle, there is no arrangement between the creditor and Topkarz. The introduction of a new and different contract between Truman and Topkarz means that there is no arrangement between the creditor and the supplier, Topkarz. However that argument is not available to the Second Defendant before me because it is precluded by the decision of Judge Hughes QC which I must follow.
36. The term “arrangements” must therefore be more widely understood. The ratio of the judgment in Truman is that in each case the facts must be scrutinized to see whether the nexus between the supplier and the creditor is too tenuous to be described as an arrangement. In answering that factual question a court must have regard to the broad loose language of this part of the Act and to the fact that the Act is intended to be a consumer protection measure.

37. The present case is probably a five-party transaction. Waller LJ in the *Office of Fair Trading* case at paragraph 11 noted that the Second Defendant, which was also a party to that case, was only a card issuer. It did not act as a merchant acquirer at all. It was a member of a network which utilises independent merchant acquirers and was thus always a party to transactions entered into under a four-party structure. Mr Dillon has no express instructions on the point but the case has proceeded on the assumption that the same position applies.
38. Mr MacBean submits that Trueshopping are in a position identical with that of Truman. Insofar as there may be factual distinctions (as there almost always are) they strengthen rather than undermine his submission.
39. Mr Dillon submits that the decision in Truman can be distinguished. He submits that Judge Hughes QC followed the decision of Gloster J but that her decision was later appealed. However there is no merit in that submission because her judgment on the material points was upheld on appeal. (The Court of Appeal allowed an appeal against that part of the decision which related to use of credit cards abroad. The House of Lords upheld the decision of the Court of Appeal on this point: *[2008] 1 AC 316*; *[2007] UKHL 48* but this part of the judgment is not relevant to the issue in the present case.) Waller LJ said:

“64. The word “arrangements” is capable of carrying a broad meaning and in a statute which elsewhere displays a high degree of precision in its choice of language must have been deliberately chosen by Parliament with a view to embracing a wide range of different commercial structures having substantially the same effect. The judge relied on *In re British Basic Slag Ltd v Registrar of Restrictive Trading Agreements* *[1963] 1 WLR 727*, particularly the comment of Willmer LJ, at p 739, that “everybody knows what is meant by an arrangement”. As she recognised, that case was concerned with very different circumstances under different legislation, so one must be careful not to place too much reliance on it. None the less, as we said earlier, Mr Hapgood had difficulty in resisting the conclusion that even where merchant acquirers are involved there are arrangements in existence between the credit card issuer and suppliers who have agreed to accept its card.

Moreover, we find it difficult to accept that Parliament would have been willing to allow some consumers to be disadvantaged by the existence of indirect arrangements when other consumers were protected because the relevant arrangements were direct.

65. In the end Mr Hapgood's argument had to be that by enacting section 187(1) Parliament had cut down what would otherwise be encompassed by the broad wording of section 12(b). However, we are satisfied that the expression “treated as” was used to extend, rather than restrict, the scope of that section; in other words, we accept that it was part of a provision intended to prevent avoidance of its provisions. We think that the natural meaning of those words is to bring within the scope of section 12(b) arrangements that might otherwise fall outside it. If section 187(1)(2) had been intended to define the only kind of arrangements that were capable of falling within section 12(b) we think that the draftsman would have used the word “is” rather than the expression “shall be treated as”. Our conclusion is reinforced by the evidence elsewhere in the Act that the draftsman has been careful and precise in his choice of language: for example, where “means” is intended the statute says “means”, and where “includes” is meant it says “includes”: see the definitions in section 189. We therefore reject Mr Hapgood's argument and, like the judge, take comfort from the fact that many distinguished commentators on the Act support that view: see, for example, Goode, *Consumer Credit Law and Practice*, looseleaf ed, IC 25.63(a) and IC 33.148; Guest & Lloyd, *Encyclopaedia of Consumer Credit Law*, looseleaf ed, pp 2074/2, 2074/6 and Brindle & Cox, *Law of Bank Payments* 3rd ed (2004), paras 4–066, 5–027 and 5–029.

66. For all these reasons we are satisfied that an agreement under which a card issuer makes credit available to the cardholder for use in connection with transactions occurring under a four-party structure falls within section 12(b) of the Act with the result that connected lender liability attaches to transactions entered into by the cardholder pursuant to it.”

40. Next Mr Dillon submits that the position of Truman was very different from the position of Trueshopping. Truman was no more than another merchant acquirer. It

had to do whatever Topkarz told it to do with the money. That was to pay it to Topkarz. It was a mere conduit for the money, a payment agent.

41. By contrast Trueshopping was receiving the money in payment for the solar panels it was supplying. It did not pass the money directly to the First Defendant. Trueshopping kept most of it. It was not acting as a payment agent or as a merchant acquirer. It was not the supplier.
42. Further he submits that a distinction should be drawn between the payments made by the Claimants using the Halifax and BHS credit cards. It could be inferred that those payments were at least in part for the services provided by the First Defendant. The sum of £2,000 taken on the BHS card he submits was the installation charge. Those card issuers were right to settle this claim therefore. The inference should be drawn that the entirety of the sum paid by the Second Defendant's card was for the solar panels.
43. Alternatively if that inference cannot be drawn, it remains unclear how the sums were apportioned and the Claimants have called no evidence to establish the destination of the individual payments or the contractual relationship between Trueshopping and the First Defendant. The burden of doing so lies on the Claimants and they have failed to discharge it

Conclusions.

44. There are the following difficulties with the submissions of Mr Dillon.
45. The sum invoiced by the First Defendant to Trueshopping was £3,967.06. That does not coincide with the precise sum taken on any credit card. It is correct that Trueshopping provided the Claimants with an invoice dated 2nd December 2011 which shows the cost of the solar panels as £9,427.62, the cost of installation as £2,000 and VAT at 5% as £571.38. The total is £11,999. However Mrs Marshall says that that was the second invoice sent by Trueshopping. The first had shown VAT at 20% which she had questioned. The total must have been the same so the figures for the cost of solar panels and/or the installation must have been different.

Further the invoice between the First Defendant and Trueshopping is inconsistent with the figures on the invoice sent to the Claimants.

46. The inference to be drawn from this evidence is that the sums taken on the credit cards are wholly unrelated to the amount charged individually by Trueshopping for the solar panels and by the First Defendant for its services. This was a payment of £11,999 using 3 credit cards for the supply and installation of solar panels.
47. Suppose that there had been a fault in the solar panels or that both the panels and the installation work had been defective. Mr Dillon submits that Trueshopping was not the supplier. Following his argument, therefore, the Claimants would have had no claim under section 75 against the Second Defendant even though Trueshopping had received payment by credit card and had supplied panels which were not fit for the purpose for which they were required.
48. Truman provided services to Topkarz. They included foreign exchange transactions, remittances to foreign garages and the payment of duties to HM Customs & Excise. See paragraph 26 of the judgment. Truman received remuneration for these services. They did not simply pass on the sums received by credit card to Topkarz. The distinction which Mr Dillon seeks to draw between Topkarz and Truman, and on which he bases his submission that Truman was merely a payment agent, is not a valid one. In any event, I am not persuaded that it is material.
49. The reality of the present case is that the Claimants agreed to pay £11,999 for the supply and installation of solar panels at their house. They dealt with the First Defendant unaware of the arrangement between the First Defendant and Trueshopping under which the First Defendant solicited the contract with the Claimants and Trueshopping then supplied the solar panels and received payment by credit card. The First Defendant then arranged installation by Caddy. The Claimants became aware of Trueshopping because the First Defendant directed them to make payment to Trueshopping. Trueshopping issued the invoice for payment to the Claimants. Trueshopping and the First Defendant were working together under an agreement whose precise terms are unknown and were never made known to the Claimants but which included an arrangement for payment for the whole of the price

of the solar panels and installation by credit card to Trueshopping. Trueshopping had a greater interest in the supply and installation of solar panels to the Claimants than Truman had in the supply of cars to the customers of Topkarz. I accept Mr MacBean's submission that the factual differences between this case and *Truman* strengthen rather than weaken his submission. If there were arrangements between the creditor and Topkarz in *Truman*, as Judge Hughes QC concluded, there is no basis upon which I can distinguish that decision on the facts and say that there were no arrangements in the present case between the Second Defendant and the First Defendant.

50. I therefore conclude that the nexus between the supplier (the First Defendant) and the creditor (the Second Defendant) is not too tenuous to be described as an arrangement. It is at least as close as the relationship in *Truman*.

51. Accordingly I decide the primary issue in favour of the Claimants.

52. I have sent a draft of this judgment to counsel and invited them to agree, if possible, the terms of any order, costs and any further directions which may be necessary. I will therefore adjourn all further matters which, if not agreed, can be dealt with at a telephone hearing.