Claim no. 2015 Folio 0656

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

ARTHUR HOLGATE & SON LIMITED
(IN CREDITORS' VOLUNTARY LIQUIDATION)

Claimant

v

BARCLAYS BANK PLC

Defendant

PARTICULARS OF CLAIM

Hausfeld & Co LLP
12 Gough Square
London EC4A 3DW
Tel 020 7665 5000
Fax 020 7665 5001

Ref L0154.0001
Solicitors for the claimant

CL-2015-000656

Claim no. 2015 Folio 0656

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

ARTHUR HOLGATE & SON LIMITED
(IN CREDITORS' VOLUNTARY LIQUIDATION)

Claimant

v

BARCLAYS BANK PLC

Defendant

PARTICULARS OF CLAIM

The Parties

1. The firm Holgates was established in about 1870. It was incorporated in 1935 as Arthur Holgate & Son Limited ("**the Company**"). The Company was placed into administration by its bankers, Barclays Bank plc ("**Barclays**"), on 1 February 2012 and then into creditors' voluntary liquidation on 7 June 2013. At all material times until formal insolvency, the Company had been owned and managed by the Holgate family, principally Martin Holgate ("**MH**"), Margaret Holgate and Paul Holgate ("**PH**").

2. By the time Barclays became its bankers in July 2005 as described below, the Company was a thriving SME operating and developing the following three caravan parks in Scotland, the North East and the North West respectively:
   a. The Park of Brandedleys, Crocketford, Dumfries DG2 8RG ("**Brandedleys**");
   b. Mount Pleasant Caravan Park, Intake Lane, Acaster Malbis, York YO23 2UA ("**Mount Pleasant**"); and
   c. Silver Ridge Caravan Park, Hale, Milnthorpe, Cumbria LA7 7BW ("**Silver Ridge**")

   (together: "**the Parks**").

3. At all material times, Barclays was:

a. authorised under Part IV of the Financial Services and Markets Act 2000 ("**FSMA**") to give investment advice on, and arrange deals in, designated investments, including interest rate swaps ("**Swaps**");

b. (up until 1 April 2013) subject to regulation by the Financial Services Authority ("**FSA**") and subject to the scheme of regulation set out in the FSA handbook rules made by the FSA under the FSMA, including the following sections of those rules:

   i. the Fit and Proper test for Approved Persons ("**FIT**"),

   ii. the Principles for Business ("**PRIN**"),

   iii. at all material times up until 31 October 2007, the Conduct of Business ("**COB**") rules, and

   iv. the Supervision Manual ("**SUP**");

c. (since 1 April 2013) subject to regulation by the Financial Conduct Authority ("**FCA**") and subject to the scheme of regulation set out in the FCA handbook rules made by the FCA under the FSMA, including sections equivalent to those set out above; and

d. a member of the panel of banks whose interest rate submissions to the British Bankers Association (the "**BBA**") were used to determine the London Inter-bank Offered Rate ("**LIBOR**") for sterling and other currencies, including 3 month sterling LIBOR ("**3MSL**").

4. The 2 employees of Barclays with whom the Company principally dealt from about 2005 until about 2008 were Mr Peter Rooney ("**PR**") and Mr Mike McGill ("**MM**").

5. PR was a Senior Corporate Manager for the North West with responsibility for Barclays' specialist caravan park lending division based in Preston.

6. MM of Barclays Capital ("**BarCap**") was held out by Barclays to the Company as a specialist who would advise on interest rate hedging strategy and products and who would recommend bespoke and suitable products. In support of the contention that Barclays held out MM as having this role, the Company will rely on the following facts and matters.

   a. In written communications from MM his job title was stated to be "Treasury Risk Advisor" and "Corporate Risk Advisory."

   b. Promotional material provided by Barclays at a meeting with MH and PH on about 3 July 2007 (as pleaded below) referring to Barclays as having received awards as "Risk Advisers of the Year" for a number of consecutive years.

c. From 10 February 2005 to 31 October 2007 MM was registered by the FSA as a CF21 investment adviser with Barclays.

d. From 1 November 2007 to 22 April 2009 MM was approved by the FSA to carry on a CF30 Customer Function. By SUP 10A 10.7R(1) the Customer Function is (in particular) specified as the function of advising customers on investments.

e. The representations made to the Company by PR and/or MM between June 2005 and July 2007 as pleaded below.

7. In doing the acts and making the statements pleaded below, PR and MM were each acting in the course of their employment by, and as agent for and on behalf of, Barclays and within the scope of their actual and ostensible authority.

Introduction to Barclays

8. From about 2003 the Company's principal banker was Yorkshire Bank. In 2005 the Company wished to develop the Parks. In summer 2005 the Company learned from its auditors, KPMG LLP, that Barclays had recently formed a specialist caravan park lending division with an office in Preston. On contacting that office, a meeting was arranged with PR in June 2005.

9. The meeting took place at the Company's head office at Silver Ridge. At the meeting PR made the following representations to MH.

a. Barclays were experts in lending to caravan park owners.

b. The caravan park lending division had been set up significantly to increase Barclays' lending portfolio in this sector.

c. The Company was exactly the type of business that Barclays was looking to support.

d. Barclays' regional managers had attended a course on caravan park management and he personally had an NVQ on the subject.

e. Barclays would be able to provide financial products to benefit the Company's business.

f. Barclays wanted to create long term relationships with customers in the sector so as to support long term plans for development and acquisitions.

g. Barclays appreciated that the Company wished to embark on a phase of major improvements on the Parks which was likely to require further borrowing in the future and which could impact on profitability in the meantime.

The 2005 Facilities

10. Based on what PR said at their meeting in June:
    a. the Company (with the assistance of Mr Duncan Hopkinson of EDR Financial Management) submitted to PR a 10-year business plan which had been designed to show the profitability of the Parks once their proposed development was completed (**"2005 Business Plan"**); and
    b. PR came back to Silver Ridge a couple of days later with account opening forms and an offer presentation document entitled: "Barclays in Partnership with Arthur Holgate & Son Limited".

11. On 14 July 2005 PR wrote to the Company confirming that Barclays would "provide exactly the levels of service, advice and information you want," that his team would "offer you a personal relationship based on your needs, not ours," "provide you with direct access to the financial expertise you need for the success of your business" and would be "working with you in the future as you continue to develop your business". PR enclosed offer letters for a £3.5m Treasury Loan (**"the Loan"**) and £500,000 overdraft facility (**"the Overdraft"**) which the Company accepted.

12. The Company will refer to the Loan facility letter for its full terms. The following is only a summary of the effect of provisions on which the Company relies.
    a. The Loan was to be repaid over a 20 year term in quarterly instalments commencing 36 months after first draw down.
    b. Interest was to paid at a margin of 1.19% pa over Barclays' Base Rate.
    c. The loan was to be secured by mortgages on the Parks and a debenture.
    d. The Loan was not to exceed 60% of the value of Barclays' security as valued by its approved valuer (**"LTV Covenant"**).
    e. A minimum of £3m was to be "protected against the impact of increased interest rates for a minimum period of 5 years" from first draw down.

13. PR also sent the Company a letter dated 14 July 2005 headed "Customer Agreement for Private Customers" which the Company accepted and which set out terms on which Barclays agreed to perform services for the Company in relation (among other things) to transactions comprising designated investments within the meaning of the FSA Rules (**"Barclays' TOB"**). The Company will refer to the letter for its full terms. The following is only a summary of the effect of provisions on which the Company relies.

a. By clause 1.2, Barclays notified the Company that it would treat the Company as a private customer for the purpose of the FSA rules.
b. By clause 2.1, Barclays stated that it may give the Company investment advice (as detailed in clause 4).
c. By clause 4.1, Barclays stated that if it agreed to advise the Company on the merits or otherwise of particular transactions, it would do so on the basis of the information which the Company provided to Barclays at the time and such advice may be given orally, in writing, or in any other manner as Barclays should determine.

14. It is the Company's case that by the representations made by PR at the meeting in June 2005 and in his letter of 14 July 2005, Barclays agreed to advise the Company on the merits or otherwise of borrowing and associated transactions discussed and agreed in 2005 and from time to time thereafter as pleaded below.

The 2005 Hedges

15. By about 19 July 2005 PR had notified the Company that Barclays proposed to (and Barclays did in fact) change the interest rate charged on the Loan from Barclays' Base Rate to 3MSL.

16. Also by 19 July 2005 (on a date which MH cannot now recall but which is likely to have been when the meeting on 19 July 2005 pleaded below was arranged) PR had told MH that he would make arrangements for someone from BarCap to visit to discuss the options available for interest rate protection as BarCap were experts on this.

17. On about 19 July 2005 PR visited MH and introduced MM as a specialist who would advise on interest rate protection. By reason of the fact that MM was held out as a specialist adviser, MH reasonably understood that:
    a. MM would explain Barclays' interest rate hedging products in sufficient detail to enable the Company to make an informed decision as to a suitable product;
    b. If and to the extent that MM offered any advice and/or explanation of hedging products, MM would explain the merits and demerits in sufficient detail to enable the Company to make an informed decision as to whether the product would be beneficial; and
    c. opinions expressed by MM were expert opinions on which the Company could reasonably rely.

18. At the meeting the following representations were made to MH.

    a. MM sated that he had given thought to the best route to protect the Company.
    b. MM stated that interest rates were expected to rise.
    c. MM recommended protecting £3m over 10 years, which although longer than required by the Loan facility letter, would in MM's view provide better protection given that the focus was on long term development of the Company's business
    d. MM recommended splitting the protection between 2 products, one to cover £2m and another to cover £1m.
    e. MM produced an Interest Rate Hedging presentation document in which the only product referred to was a "Cap with Structured Floor".
    f. MM and PR stated that the recommended products would protect the Company from changes in LIBOR.

19. It is the Company's case that the representations made on behalf of Barclays at the meeting and in the presentation constituted advice.

20. Relying on that advice, on about 1 August 2005 the Company agreed to enter into 2 interest rate hedges to commence on 31 October 2005 ("**the 2005 Hedges**") comprising:

    a. a Swap for a term of 10 years with a starting notional amount of £2m (amortising down to £1,441,254 by 29 April 2015) by which Barclays would pay the Company 3MSL plus a 1.19% p.a. spread on the notional amount and the Company would pay Barclays 6.18% p.a. on the notional amount.
    b. a Structured Collar for a term of 10 years on a notional amount of £1m (non-reducing) by which if 3MSL fell below a floor rate of 3.95% p.a., the Company would pay Barclays 3.95% p.a. plus the difference between the floor rate and 3MSL, subject to a maximum of 6% if 3MSL fell below 1.9%.

21. For the reasons pleaded below, the 2005 Hedges were mis-sold and unsuitable and the advice given by Barclays recommending that the Company enter into them was negligent.

    a. Barclays failed to provide any information or advice to the Company as to the existence of other interest rate hedging products (including simple interest rate caps) and their respective cost, so as to compare with the 2005 Hedges.

that Barclays regarded the Company as a life time client and would support PH in carrying on the business.

g. MM and PR both recommended the proposal as beneficial to the Company's financial position, having no downside and involving no extra costs for the Company. PR said "It's a great product."

h. PR also specifically recommended the proposal to "tidy things up" and protect the entire Loan from any interest rate increase.

26. Following the meeting, MM sent MH an email on 3 July 2007 repeating many of the above points. The Company will refer to the email for its full terms. The following is a summary of the effect of statements in the email on which the Company relies.

a. Barclays was making the new proposal.

b. The proposal was to "protect your risk".

c. The 2005 Hedges had a combined termination value of £75,000.

d. MM's opinion was that interest rates were likely to increase further.

e. Due to the nature of the Company's business, there was a possibility that additional finance would be raised for future projects.

f. The current facility was unlikely to be repaid early so the Company could look at longer term protection for better rates.

g. MM suggested protecting the whole facility for the whole term of 18 years.

h. The hedging would be "portable".

i. The current value of the 2005 Hedges was £75,000.

j. The new proposed product was a discounted Swap.

k. The Company's initial interest repayments would not change

l. Attached to the email was an Interest Rate Hedging presentation document in which the only product referred to was a "Discounted swap with cap".

m. The presentation stated that "65% of UK Corporates use Barclays as risk advisors".

27. It is the Company's case that the representations made on behalf of Barclays at the meeting, in the email and the presentation constituted advice.

28. Relying on that advice, on about 4 July 2007 the Company proceeded to agree to enter into a Swap to commence on Friday 31 July 2007 ("**the 2007 Swap**") for a term of 18 years with a starting notional amount of £4m (amortising down to £97,304.93 by 28 April 2025) by which:

a. Barclays would pay the Company 3MSL,

b. The 2005 Hedges did not need to be for any longer term than 5 years and it was inappropriate for the Company to be committed to them for longer than the minimum period required by the Loan facility letter.

c. The 2005 Hedges (and in particular the Structured Collar) were complex and were not suitable for the Company which was an SME whose directors who were not familiar with such complex financial products.

d. The suggestion that interest rates were likely to rise was misleading and without foundation. No such forecast could reliably be given in respect of movements in interest rates over a 10 year period.

e. The 2005 Hedges were presented as purely beneficial to the Company. No warning was given as to the potential risks, especially if interest rates fell significantly.

f. No explanation was given (nor any examples) as to potential break costs, nor was any explanation given as to the potential for break costs to give rise to a contingent liability of the Company and cause the Company to be regarded as in breach of the LTV Covenant.

g. It was not suggested to MH (or to any of the Company's representatives) that independent financial advice should be sought before committing to the 2005 Hedges.

Events leading to the 2007 Swap

22. From 2005 – 2007:

a. Barclays continued high profile marketing of its specialist caravan park lending division through its presence at trade shows, advertisements in trade magazines, and the production of a DVD featuring Silver Ridge and PH;

b. encouraged by Barclays, the Company drew down the Loan (in tranches of £3,015,750 on 29 July 2005, £200,000 on 31 October 2005, £300,000 on 30 January 2006 and £502,250 on 27 December 2006) and committed the funds in developing the Parks;

c. as a result of the investment, the combined value of the Parks rose from £6.82m to £8.45m according to valuations carried out for Barclays by Edwards & Partners in January 2007;

d. Barclays knew and understood that the delay in the granting of facilities to the Company in 2005 coupled with the subsequent heavy investment increasing the capital value of the Parks had together lengthened by

approximately 6 months to 1 year the periods to achieve the volume of sales and income projected in the 2005 Business Plan;

e. by letter dated 23 November 2006 Barclays agreed to increase the Company's borrowing on Loan from £3.5m to £4m to enable the Company to continue its programme of development; and

f. the Company received the "AA Best Park in Scotland" award 2007 for Brandedleys.

The 2007 Swap

23. In mid-June 2007 PR contacted MH to suggest another meeting with MM to discuss a proposal devised by Barclays to release about £75,000 to the Company to assist the Company's cashflow.

24. The meeting was held at Silver Ridge on about 3 July 2007 and was attended by MH and PH, both of whom:

    a. knew and understood that, due to the Company's continued commitment to its programme of development, the projected income streams in the 2005 Business Plan had been delayed; and

    b. approached the meeting with the same understanding as to MM's role as MH had in relation to the meeting in on about 19 July 2005 pleaded above.

25. At the meeting the following representations were made to MH and PH.

    a. PR stated that he and MM had come up with an idea for the Company to raise funds of about £75,000 by cancelling the 2005 Hedges and replacing them with a new one for £4m over a longer term.

    b. PR stated the new proposal would not cost any more than the Company was currently paying and gave better protection.

    c. PR stated that BarCap would sell the 2005 Hedges and in relation to the new Swap "you can sell this for cash at any time you like, just as you are doing now".

    d. MM stated that since the 2005 Hedges had been taken out interest rates had increased and his opinion was that they would continue to rise.

    e. MM recommended that the Company protect the full Loan amount for the full term of 18 years, instead of only a proportion as previously.

    f. In response to a question from MH as to what would happen if any of the Parks were sold or MH retired within the proposed 18 year term, PR stated

b. if 3MSL was less than or equal to 6.5%, the Company would pay 5.5% pa.,
c. If 3MSL was greater than nor equal to 6.5% but less than or equal to 7.25%, the Company would pay 3MSL, and
d. if 3MSL was less than or equal to 7.25%, the Company would pay 7.25% pa.

29. On Friday 31 August 2007, Mr Jerry Del Missier (then Chief Operating Officer of Barclays at that time) sent an email to Mr Bob Diamond (then Chief Executive Officer of BarCap and a member of Barclays' board of directors) and to Mr Rich Ricci (former Head of Investment Banking at BarCap and a member of its Executive Committee) confirming that 3MSL and other LIBOR reference rates were known not to be honest rates in that they were concocted by Barclays and other banks, stating: "*The whole LIBOR curve is rubbish. The real story is that these are all fantasy rates*".

30. For the reasons stated below, the 2007 Swap was mis-sold and unsuitable and the advice given by Barclays recommending that the Company enter into it was negligent.
    a. Barclays failed to provide any information or advice to the Company as to the existence of other interest rate hedging products (including simple interest rate caps) and their respective cost, so as to compare with the 2007 Swap.
    b. The 2007 Swap did not need to be for a longer term than 3 years and/or it was inappropriate for the Company to be committed to a Swap for 18 years.
    c. The statement that the 2007 Swap could be sold for cash at any time was false and misleading, because it failed to draw attention to the fact that in a lower interest rate environment the 2007 Swap would have no cash value and a break cost would be payable by the Company to terminate it early.
    d. The 2007 Swap was complex and was not suitable for the Company which was an SME whose directors were not familiar with such complex financial products.
    e. For all practical purposes, the 2007 Swap was not "portable" (as subsequently acknowledged by Barclays in October 2010, as pleaded below under the heading "Sale of Silver Ridge in 2010").
    f. The suggestion that interest rates would continue to rise was misleading and without foundation. No such forecast could reliably be given as to movements in interest rates over an 18 year period.
    g. The 2007 Swap was presented as purely beneficial to the Company. No warning was given as to the potential risks, especially if interest rates fell significantly.

h. Far from protecting against risk, the 2007 Swap increased the risk to the Company in the event of interest rates decreasing by causing there to be a large break cost which Barclays treated as a contingent liability of the Company, and which could give rise to breach of the LTV covenant.

i. No explanation or examples were given as to potential break costs. Nor was any explanation given as to the potential for break costs to give rise to a contingent liability and/or breach of the LTV Covenant.

j. No mention was made of the fact that the existence of the Swap might deter a lender (whether Barclays or any other lender) from providing finance to the Company by reason of the extent of the contingent liabilities which a lender was likely to attribute to the Swap (as pleaded in further detail below).

k. The suggestion that the 2007 Swap involved no extra cost for the Company was wrong and misleading because it failed to take into account the potential break costs.

l. It was not suggested to MH (or to any of the Company's representatives) that independent financial advice should be sought before committing to the 2007 Swap.

m. There was no or no reasonable basis for the representation that the sum payable to the Company on termination of the 2005 Hedges as £75,000. As Barclays has since admitted by letter to the Company dated 22 June 2015 2007, applying Barclays' own "current standards" to the calculation, the Company should have received (but did not receive) an additional sum of no less than £69,035. (For the avoidance of doubt the Company reserves the right to adduce expert evidence as to the sum which it should have been paid.)

Barclays' Swap Exposure

31. Although unaware of it at the time, the Company now understands that Barclays had in place internally certain assessment and monitoring systems to measure the risk which Swaps were perceived to represent to Barclays, including the contingent liabilities associated with the so-called "Mark to Market" cost ("**MTM**") and which were used to calculate Barclays' estimated future exposure to the market if the Company defaulted under the 2007 Swap and/or in the event of default under the Loan ("**Barclays' Swap Exposure**"). The Company will refer, by way of example, to an email from Mr Alex Guidi of BarCap dated 27 October 2010 (10:26) sent after part of the 2007 Swap had been cancelled (as pleaded below) stating that "whilst the hedge

currently holds a mark to market termination value of £756k (cost to Holgates) the total cost to the bank (i.e. its peak potential exposure) of holding the hedge is closer to £1.1m)".

32. Pending disclosure, it is inferred from the downward movement of the interest rates and the inappropriate features of the 2007 Swap that by late 2007 or early 2008 Barclays' Swap Exposure was considerable and increasing.

33. Further, at some point in about late 2007 or during 2008, the Company understands that Barclays decided to reduce its commitment to the caravan park sector and to close its caravan park division, frustrating the purpose of the long-term loan (with the associated 2007 Swap) from Barclays, namely, to invest in developing the Parks.

34. On a date unknown to the Company but which Barclays has stated was in February 2008, Barclays transferred control of the Company's accounts from the client relationship team within Barclays to Barclays Business Support ("**BBS**") and, in particular, to Mr Stuart Gentle, an Associate Director in BBS ("**SG**").

35. Pending disclosure, it is inferred that the Company was placed in BBS primarily because Barclays' systems and/or credit committee(s) had caused the Company to be entered on an internal warning list due to Barclays' Swap Exposure (including by reference to the increases in the MTM) and to its decision to withdraw from the sector.

36. On a date unknown but believed to be in early 2008, Barclays decided to implement a managed exit from its banking relationship with the Company, for which purpose it would rely over several years on the following facts and matters to establish the Company's illiquidity:
    a. the increasing cost to the Company of having the 2007 Swap ("**Swap Costs**");
    b. the increasing cost to the Company of being in BBS, such as increased interest costs and additional banking and professional fees ("**BBS Costs**"); and
    c. the consequent refusal of Barclays to enable the Company to implement its business plans, as agreed.

    ("**Exit Plan**")

37. The Exit Plan would include forcing involuntary liquidation of the business and assets of the Company and, if necessary, the formal appointment in due course of Barclays' chosen insolvency practitioners to control any formal insolvency of the Company.

38. In 2008 the full and adverse implications of being in BBS were not known to the Company, nor was Barclays' Swap Exposure disclosed to the Company as a reason for the transfer of the Company's accounts to BBS. It was an essential feature of the Exit Plan that it should not be communicated to the Company's management who would therefore continue to operate for as long as possible in the false belief that Barclays intended to support it.

The 2008 Short Term Loan and Projections

39. Once the Company was in BBS, Barclays adopted a pattern of behaviour designed to create a misleading impression that the Company's liquidity problems were created by the Company itself and/or by external market conditions. In fact, any financial difficulties suffered by the Company were referable to the Swap Costs, the BBS Costs and Barclays' reaction internally to Barclays' Swap Exposure.

40. Shortly after the Easter break in 2008, at a meeting with MH, PH and Duncan Hopkinson (who had prepared the 2005 Business Plan) PR stated for the first time that Barclays wanted the Company to start marketing Brandedleys for sale. Pending a further review of progress, by a facility letter dated 23 April 2008 Barclays agreed to provide the Company with an additional short term loan of £850,000 (**"Short Term Loan"**) repayable by 30 September 2008, to refinance part of the Company's borrowing on overdraft.

41. In about May 2008 a revised set of 10 year cashflow projections was prepared on behalf of the Company by Duncan Hopkinson (**"2008 Projections"**). This was provided to Barclays to update the 2005 Business Plan. The 2008 Projections showed a negative closing balance of £366,383 in 2008 moving to a positive closing balance by 2012, and exceeding £2.7m by 2018.

The 2008 Independent Business Review ("IBR")

42. A meeting was held on 7 July 2008 at Silver Ridge attended by MH, PH, Duncan Hopkinson, PR, SG (with an assistant from BBS), and Mr David Costley-Wood of KPMG, Manchester. At the meeting SG stated that:
    a. the aim of BBS was to help the Company get back into a position in which it was able to meet its financing costs;

b. to do so, Barclays required the Company formally to instruct KPMG to conduct an IBR (which became known as "Project Heathcliff"); and

c. Barclays would also require a revaluation of its security (at the Company's expense, although the likely costs were not explained).

43. Pursuant to the Exit Plan, by letter dated 8 July 2008 SG notified the Company that Barclays would:

a. increase the Overdraft to £1m, charging a BBS lending fee of 2% in the sum of £12,000

b. charge a further BBS fee of £24,380 for the issue of a letter waiving an alleged breach of the LTV covenant; and

c. impose additional charges and interest, comprising an additional BBS charge of £2,000 per month (payable quarterly) and higher BBS interest charges on:

i. the Company's Loan (increasing the margin from 1.19% to 2.5%);

ii. the Overdraft (increasing the margin from 1.19% to 3%); and

iii. the Short Term Loan (increasing the margin to 2.75%).

44. By letter to the Company dated 1 September 2008, Barclays agreed to increase the Overdraft to £1.15m.

45. At a meeting on about 12 September 2008 at the offices of KPMG in Manchester, David Costly-Wood informed PH that Barclays now required repayment in full from the liquidation of assets. That was later confirmed in an email from SG to MH on or about 9 October 2008, in which SG stated that the Company's facilities had expired and were in default, Barclays was seeking full repayment as soon as possible and delaying marketing Mount Pleasant and Brandedleys was "not an option".

46. The Company wished to explore refinancing with another bank. However, also in about October 2008, PR revealed to the Company for the first time that repayment of the Company's facilities and termination of the 2007 Swap would give rise to fees (together the "**Exit Fee**") comprising a loan exit fee (at that time about £40,000) and hedge exit fee (at that time about £200,000). In due course, Barclays would increase the Exit Fee substantially.

47. The effect of the Swap Costs, the BBS Costs and the Exit Fee was that Barclays had unbreakable control of the Company, preventing refinancing with other banks

(although the Company continued to attempt to seek to refinance) without liquidation of assets to repay the whole or a substantial part of Barclays' debt.

48. By October 2008 KPMG had prepared 3 IBRs for Project Heathcliff (dated 22 July 2008, 11 August 2008, and 3 October 2008), thereby increasing the BBS costs to the Company by a further £40,538. These reports failed to address the impact of the 2007 Swap on the Company's ability to arrange refinance and simply confirmed the need for liquidation of assets if Barclays' facilities were to be repaid as Barclays required.

Sale of Mount Pleasant in 2009

49. In October 2008 SG offered to renew the Company's facilities if the Company agreed to take immediate steps to market Mount Pleasant for sale and take reasonable steps to achieve a sale on the best terms reasonably available. The Company will refer to email exchanges between SG and MH dated 13, 14 and 15 October 2008 which evidence the agreement (the "**October 2008 Agreement**").

50. Pursuant to the October 2008 Agreement, the Company agreed to and did market Mount Pleasant for sale. Accordingly SG then arranged for Barclays to issue:
    a. a letter dated 28 October 2008:
        i. extending the Loan capital repayment holiday to April 2009; and
        ii. extending the repayment date of the Short Term Loan to October 2009 and the capital repayment holiday to April 2009; and
    b. an overdraft facility letter dated 7 November 2008 renewing the Company's Overdraft at £1.75m.

    Each facility was stated to be repayable on demand. Further Barclays introduced an additional BBS fee of £40,650 per quarter.

51. By Christmas 2008 a number of offers had been received for Mount Pleasant and the Company and was in negotiation with potential purchasers.

52. In January 2009 Paul Hyde, a Director of BBS, took over from SG. By email on 30 January 2009, Mr Hyde informed MH that the 2007 Swap break fee was now £621,000, and in April 2009 Mr Hyde refused to consider any further increase in the Company's borrowing limits.

53. By April 2009 the Company had agreed terms, subject to contract, for the sale of the mobile home section of Mount Pleasant (with the exception of 3 park homes, but inclusive of certain stock) to Mark and Sally Barney for £3.55m.

54. As at 5 May 2009:

    a. the Company's solicitor (Mr Stephen Wright of Wright & Lord) sought Barclays' consent to release its security to enable the sale to proceed on the basis that no deposit would be received on exchange of contracts but there would be a long-stop completion date (no later than 4 months from exchange) and if completion did not take place by reason of default by the purchasers, the purchasers would be liable to pay 10% of the purchase price (£355,000) to the Company,

    b. if the sale had proceeded to completion as expected, the Company was likely to be able to refinance the remainder of its borrowing with National Westminster Bank plc (**"Natwest"**) which had indicated its willingness to provide finance to the Company for that purpose, and

    c. even if, by reason of the purchasers' default, the sale had not completed by September 2009, with the benefit of the sum of £400,000 and the Company would have been able either to reduce its liabilities to Barclays to facilitate moving its accounts to Natwest, or to pay the 2007 Swap break fee, or to maintain regular payments to Barclays.

55. On 7 May 2009 Mr Hyde refused consent on behalf of Barclays on the ground that there was no provision in the proposed contract for payment of a deposit. This position was confirmed by email from Mr Hyde to Mr Wright on 8 May 2009 in which Mr Hyde stated "no deposit equals no exchange". As a result:

    a. the intending purchasers withdrew and the opportunity to sell the mobile home section of Mount Pleasant for £3.55m was lost, and

    b. the Company lost the opportunity to refinance its borrowing with Natwest because Natwest's proposal to refinance at the time (and as confirmed by an email dated 8 July 2009) was subject to the sale of Mount Pleasant.

56. On 24 September 2009 Mount Pleasant (comprising the entire park but excluding stock) was sold for £4.439m to Flannigan Enterprises Limited, followed in November 2009 by the sale of the Mount Pleasant stock to Flannigan Enterprises Limited for £770,000. In comparative terms, the value of the sale was about £460,000 lower than the value of the proposed sale to Mr & Mrs Barney.

57. On 6 October 2009 the 2007 Swap was varied so as to reduce the notional amount protected to £3m, amortising to £97,305 by 28 April 2025. The cost of the variation was £95,100 but this still left the Company significantly over-hedged.

58. On 20 November 2009, without the consent of the Company, Barclays retained the proceeds of sale of the Mount Pleasant stock on what it called a Securities Realisation (or Realised) Account. Barclays failed to allow the Company to benefit from that sum by applying it immediately in reduction of the Company debt. This increased the Company's dependence on borrowing on overdraft, yet from 16 January 2010 Barclays cancelled the Company's Overdraft facility so that its borrowing on overdraft was treated as unauthorised and attracted BBS interest at 29.5% p.a. until about May 2010 when the Overdraft was repaid from funds held in the Securities Realisation Account.

Sale of Silver Ridge in 2010

59. In April 2010 Mr Martin Souter (**"MS"**), another Director in BBS, replaced Mr Hyde. MS continued to pursue the Exit Plan on behalf of Barclays by insisting that Barclays should be repaid in full from the liquidation of assets.

60. In May 2010 the Company was still trying to arrange refinance with Natwest but was unable to do so in view of the Exit Fee, which by 21 May 2010 stood at £641,647 (according to Barclays) notwithstanding the reduction in the notional amount of the 2007 Swap as pleaded above.

61. In about July 2010, MS having threatened to replace management by the appointment of administrators, Silver Ridge was marketed for sale.

62. In October 2010:

    a. Deloitte LLP provided a report to Barclays dated 15 October 2010 (a further BBS Cost of about £40,000) on the Company's short-term cashflow, recent trading and strategy going forward (known as Project Berry).
    b. The report concluded that although Silver Ridge and Brandedleys were trading profitably, the Company was not generating sufficient profits to meet financing costs.
    c. MS required MH personally to inject £400,000 into the Company, without which MS stated (by email dated 15 October 2010) "the game is over right

now". As a result of that pressure from MS, MH agreed to and did make the cash injection demanded by MS.

d. At the insistence of MS, the Company agreed to Barclays obtaining a re-valuation of Brandedleys from Edward Symmons LLP at a cost to the Company of £4,830.

e. By letter dated 12 October 2010, MS required the Company to agree to pay legal fees of Pinsent Masons, solicitors, to undertake a monitoring role for Barclays (a BBS Cost of about £5,884).

f. By email dated 20 October 2010 (15:45) MS insisted that the Company should make no further payments to creditors without review (at the Company's expense) by Deloitte LLP.

g. In response to enquiries from the Company as to the possibility of reducing the 2007 Swap in stages, by email on 27 October 2010 (08:52) MS advised that the 2007 Swap should be terminated in full from the sale proceeds of Silver Ridge, at a cost of £750,000, because (among other reasons) "the hedge is a more complex product than I first appreciated, and as such I am not convinced all banks would be able to novate and handle the trade". MS thereby acknowledged that the 2007 Swap was not in reality "portable".

h. A contract for the sale of Silver Ridge for a total of £2.25m was entered into with completion taking place on about 1 November 2010, and

i. the 2007 Swap was terminated on about 29 October 2010 at a cost of £701,500 (such that the total break cost, inclusive of the 6 October 2009 variation, was £796,600).

63. Thereafter:

a. MS insisted that all payments made by the Company were approved by or on behalf of Barclays, and

b. By email to MH dated 16 November 2010 (timed at 12:51) MS informed MH that he (MS) would be instructing Edward Symmons LLP to market Brandedleys for sale.

Treatment of the Company's complaints

64. By letter dated 3 December 2010 the Company complained formally to Barclays at:

a. the contribution made to the Company's financial difficulties which were attributable to the 2007 Swap;

b. Barclays' refusal of consent to the sale of Mount Pleasant to Mr/s Barney;
c. Barclays' retention of the sum of about £500,000; and
d. "the huge level of fees being triggered by Barclays Bank's insistence on having layer upon layer of advisers involved in what is now a small and relatively simple business".

65. In response, Barclays rejected the Company's complaints save for:
    a. refunding £15,189 (said to represent interest charged on the Company's Overdraft from January to May 2010); and
    b. offering to refund £28,039 (said to represent the loss caused to the Company by not having the benefit of the funds retained on the Securities Realisation Account plus a refund of £2,942 of fees charged by Pinsent Masons).

66. During 2011 and 2012 the FSA had a growing concern that banks such as Barclays had systematically mis-sold swaps and, by enforcing their strict legal rights under mis-sold swaps, the banks were in a position to stifle any customers' claims arising from swap mis-selling (**"Stifling"**).

67. On 31 March 2011 Deloitte LLP produced a further report for Barclays confirming that without overdraft facilities the Company was likely to breach its remaining loan facility. In fact, in the Company's financial year to 31 October 2010, but for payment of the 2007 Swap break fee of £701,600, the Company had traded profitably.

68. By letter dated 3 May 2011, in response to the Company's letters of complaint, and for the purpose of Stifling, Barclays proposed to offer the Company an overdraft facility of £40,000 for 6 months, but on onerous terms (including requiring the Company's directors to provide a joint and several guarantee to cover the facility) and only as part of a full and final settlement of the Company's complaints. The offer was rejected by the Company at a meeting attended by (among others) MH and MS on about 8 July 2011.

69. On 1 September 2011, the Company notified Barclays that it was referring its complaints to the Financial Ombudsman Service (**"FOS"**).

Administration

70. On a date unknown to the Company, Barclays decided to take control of the Company for Stifling purposes and contacted Deloitte LLP as one of its panel firms of insolvency practitioners to prepare to take up appointment as administrators.

71. On 30 January 2012, whilst the Company's complaints were still under investigation by the FOS, Barclays made formal demand on the Company for repayment of the Loan (said to be £1.264m) and what Barclays claimed to be unauthorised borrowing on overdraft (said to be £153,000, but in fact representing some £82,040 in Loan repayments to Barclays plus fees charged by Deloitte of over £45,600, the impact of the £28,039 which Barclays had conditionally offered to refund in settlement of the Company's complaints) and a further £14,702.87 held in Barclays Merchant Services account.

72. On 1 February 2012, in furtherance of the Exit Plan, Barclays appointed Mr John Reid and Mr William Dawson of Deloitte as administrators of the Company (**"the Administrators"**). The Company reserves the right to claim in due course that the appointments were invalid in that:

    a. the Company's alleged cash flow difficulties were derived exclusively from the 2007 Swap; and
    b. they were for an improper purpose, namely Stifling.

    For the avoidance of doubt, the Company reserves its rights in respect of all and any claims which they may have against the Administrators, but does not for the time being seek in these proceedings to make any claim against them. The following facts and matters are, however, relied on as relevant background for the purpose of the claims made against Barclays in these proceedings.

73. As joint administrators of the Company, each of the Administrators owed a statutory duty under paragraph 3 of Schedule B1 to the Insolvency Act 1986 to perform their functions with the first statutory objective of rescuing the Company as a going concern; or, failing that, achieving the second statutory objective of a better result for the Company's creditors as a whole than would be likely if the Company were wound up without first being in administration; or, failing that, realising property in order to make a distribution to one or more secured or preferential creditors (**"Objective 3"**).

74. The Administrators wrongly treated the administration from the outset as an Objective 3 case and:

a. made no attempt to realise any of the Company's causes of action against Barclays (whether by commencing litigation, making assignments or negotiating settlements) so as to ensure that no value could be ascribed to them and thereby supporting an Objective 3 approach;
b. failed to take steps to realise the assets of the Company for the best price reasonably obtainable; and
c. took instructions and directions from and acted at the bidding of Barclays in the performance of their functions as Administrators.

75. In the circumstances, Barclays is liable to the Company for having wrongly caused it to go into administration and, notwithstanding their statutory agency under paragraph 69 of Schedule B1 to the Insolvency Act 1986, is liable for the acts and omissions of the Administrators as its de facto agents.

76. On 17 May 2012 the FOS wrote to notify MH that, in the absence of confirmation from the Administrators that they wanted the Company's complaints against Barclays reviewed by the ombudsman, the FOS complaint file was being closed.

FSA & FCA Review

77. On 29 June 2012 Barclays (and other banks) agreed with the FSA to engage in a review of interest rate hedging products (**"FSA Review"**) which was continued by the FCA from 1 April 2013 (**"FCA Review"**).

78. In July 2012 MH complained to Barclays that the 2005 Hedges and 2007 Swap had been mis-sold and had led to the administration of the Company. In an effort to prevent Stifling by Barclays, by email dated 8 July 2012 (23:24) Mr Russell Brown, MP for Dumfries & Galloway, also sought an explanation of why Barclays was allowing the Administrators to continue the process of slowly destroying the business when the Company could have a successful claim against Barclays.

79. By email to Mr Steven Hopkins (**"SH"**) of BBS on 1 August 2012, MH repeated his request for Barclays to consider the mis-selling complaint and put Barclays on notice that while the Company remained in administration the residual value of its one remaining park (Brandedleys) was being eroded daily due to the fact that the park was being run without any visible management, sales staff or advertising such that customers were already very thin on the ground and others were removing their

caravans. In response on 2 August 2012, SH claimed that the Administrators were pursuing the Company's dispute in relation to the hedge products against Barclays. As far as MH is aware, no substantive steps had been taken by the Administrators to pursue any claim against Barclays.

80. A proposal made in about September 2012 by the former management to the Administrators for the Company to exit from administration by means of a company voluntary arrangement was rejected by the Administrators and Barclays.

81. On 28 January 2013 the Administrators gave notice of their intention to sell Brandedleys. Upon an application for an injunction to restrain the sale being dismissed, Brandedleys was under-sold by the Administrators to Brandedleys Holiday Park Ltd for £1.075m. Completion of the sale took place on about 26 February 2013.

82. According to their final progress report of 3 June 2013, the Administrators' fees amounted to £342,500, the fees of their solicitors (Pinsent Masons) amounted to £131,000 and fees of HBJ Gateley solicitors amounted to £15,637.

83. On 7 June 2013 the Company went into creditors' voluntary liquidation.

84. By letter dated 18 July 2013 Barclays invited the Company to participate in the FCA Review. By letter dated 23 April 2014 Barclays wrote to the Company's liquidator offering net redress of only £311,134 under the FCA Review for the mis-sale of the 2007 Swap, comprising reimbursement of overpayments said to amount to £1,001,991 plus interest of £314,440, less £1m said to be owed by the Company to Barclays.

The Company's claims

85. For the avoidance of doubt, the Company's case is that the Company entered into both the 2005 Hedges and the 2007 Swap as a result of the misrepresentation, mis-statement, breach of contract and negligence on the part of Barclays pleaded below. However:

    a. the Company accepts that it did not suffer financial loss solely by entering into the 2005 Hedges, because the 2005 Hedges were terminated in circumstances in which the MTM was favourable and resulted in payment being made to the Company;

b. the Company does not, therefore, claim any remedy in relation to the 2005 Hedges save by way of an account of the sum due on termination (as pleaded below);

c. the Company nevertheless pleads its case in relation to both the 2005 Hedges and the 2007 Swap below so as to meet in advance any argument that any remedy to which the Company may be entitled in relation to the 2007 Swap is to be approached on the assumption that the 2005 Hedges would have remained in place.

LIBOR

86. LIBOR (including 3MSL) is and was at all material times the leading global benchmark for short-term interest rates and, in particular, a leading benchmark reference rate used in sterling interest rate hedging contracts.

87. At all material times (and until 1 February 2014) the BBA administered the setting of LIBOR.

88. At all material times LIBOR was defined by the BBA as follows (the "**BBA LIBOR Definition**"):

> *"The rate at which an individual contributor panel bank could borrow funds were it to do so by asking for and then accepting interbank offers in reasonable market size just prior to 11.00 a.m. London time."*

The LIBOR Transactions

89. So far as relevant to these proceedings, the Loan facilities which Barclays agreed with the Company as pleaded above required interest to be paid by the Company at floating rates referenced to LIBOR and which therefore varied with fluctuations in LIBOR. Barclays proposed the use of LIBOR (rather than any other reference rate, such as base rate) as the reference rate for the calculation of interest, when it offered the Loan facilities.

90. The 2005 Hedges and the 2007 Swap were each proposed by Barclays and the express terms on which Barclays agreed to enter into each of them were set out by Barclays in writing in documents entitled 'Rate Swap Confirmation'. Barclays prepared and sent the Rate Swap Confirmation after each the Swap had been put in place.

91. Under each of the 2005 Hedges and the 2007 Swap:

a. the sums payable by and to the Company were referenced to and dependent upon the level of 3MSL,

b. if payments were to be made by and to either party, these were to be netted off and the net amount was payable by or to the party entitled,

c. the payments to be made by or to each party were to be calculated by Barclays by reference to specified quarterly payment dates, and

d. Barclays was to give, and has from time to time given, notice to the Company (each a **"Reset Advice"**) on a quarterly basis of a calculation of the amount payable for that quarter by reference to a stated rate representing 3MSL.

92. Barclays impliedly made the following representations (the **"LIBOR Representations"**) to the Company and a reasonable person in the position of the Company would have inferred that Barclays was making the following representations.

a. Barclays' own participation in the setting of LIBOR was an honest one.

b. Barclays had no grounds for believing that LIBOR had been or was being improperly influenced or manipulated or that its integrity has been or was being undermined by Barclays or by any other bank.

c. Barclays had no grounds for believing that in the future Barclays or any other bank would, or was likely to seek improperly to, influence or manipulate LIBOR or undermine its integrity.

d. Barclays had no grounds for believing that LIBOR represented, or might in the future represent, anything other than a rate within the BBA LIBOR Definition determined from time to time on the basis of true and honest submissions by Barclays and other submitting banks.

e. It had not been and was not Barclays' policy or practice (nor was it the policy or practice of any employee of Barclays which was known to any person to whom Barclays had delegated responsibility for making its LIBOR submissions)

   i. to make false or misleading LIBOR submissions to the BBA, and/or

   ii. to seek improperly to influence or manipulate LIBOR or undermine its integrity.

f. At the time of entering into the 2005 Hedges and the 2007 Swap and/or sending a Reset Advice, it was not the intention of Barclays at any future time (and, in particular, during the term of the 2005 Hedges and 2007 Swap):

   i. to make false or misleading LIBOR submissions to the BBA, or

ii. to seek improperly to influence or manipulate LIBOR or undermine its integrity.

93. The LIBOR Representations were made by Barclays by the following conduct and on the following occasions.

a. When Barclays proposed, offered and agreed to make the Loan facility to the Company on terms that LIBOR should be the reference rate for the calculation of interest.

b. When Barclays proposed, offered and agreed to enter into the 2005 Hedges and the 2007 Swap on terms referenced to LIBOR.

c. Each time Barclays sent a Reset Advice to the Company.

Inducement and reliance

94. The LIBOR Representations were made by Barclays knowing and intending that the Company would rely on them and be induced by them, and the Company did in fact rely on them and was in fact induced by them:

a. to agree to borrow from Barclays on terms that LIBOR should be the reference rate for the calculation of interest;

b. to agree to enter into the 2005 Hedges and the 2007 Swap on terms referenced to LIBOR, and

c. to accept the Reset Advices and rely upon each Reset Advice as a valid, effective and accurate notification of sums payable under the 2005 Hedges and 2007 Swap and (if required by the Reset Advice) to make payments to Barclays.

Particulars of falsity of LIBOR Representations

95. At all material times (which pending disclosure, the Company believes to be from at least 2005 until at least 2009) (the "**Material Period**"), the LIBOR Representations were false. The Company's case at trial will be as follows.

a. At the time when the 2005 Hedges and the 2007 Swap were entered into and/or at the time each Reset Advice was sent in the Material Period, Barclays was knowingly participating with other banks in making false LIBOR submissions in all key currencies, including sterling. The purpose and/or motive varied from time to time but the effect of the false submissions was to render the rates

unreliable, if not meaningless, and to undermine the integrity of LIBOR as a benchmark rate.

b. The Company will rely on the regulatory investigations, reports and public statements (the "**Published Materials**"), particulars of which are set out in the attached Appendix.

c. The Company relies on material made public in proceedings brought in this Court (Claim N 2012 Folio 1259) by Graiseley Properties Ltd and others against Barclays ("**Graiseley**").

d. The Company also relies in relation to the facts and matters pleaded in paragraphs 96 to 138 below on the content of a statement of case dated 28 March 2014 served on behalf of the claimants in Graiseley, a copy of which was provided to the Company by Barclays on 8 December 2015.

Barclays' case in relation to Sterling LIBOR Misconduct

96. Barclays' employees responsible for making its submissions for sterling LIBOR and, in particular, 3MSL were primarily Peter Spence ("**PS**") and Ian Pike ("**IP**") (together, the "**Sterling Submitters**").

97. Despite overwhelming evidence to the contrary, by its defence in Graiseley, Barclays asserted that the Sterling Submitters did not manipulate LIBOR, save for their false submissions made pursuant to the so-called October 2008 Instruction (which, Barclays alleged, lasted only a small number of days). Otherwise, Barclays' case was that it had not engaged in improper sterling LIBOR submissions nor was it guilty of manipulation of sterling LIBOR rates ("**Sterling Misconduct**").

98. For this purpose, Barclays has attempted to create the appearance of an unfalsifiable closed circle of apparently established facts by asserting that:

a. Barclays has provided full disclosure to the Regulatory Authorities of all material relevant to Sterling Misconduct.

b. By reference to those facts, the only Sterling Misconduct identified by the Regulatory Authorities is included within what Barclays calls "Occasional Sterling / Yen Submissions", which Barclays admits.

c. Barclays is unaware of the facts which form the basis of its admissions of the Occasional Sterling / Yen Submissions.

d. Barclays can give no further details of any Sterling Misconduct.

e. If (which Barclays denies) they were made to its SME customers such as the

Company, the LIBOR Representations were irrelevant (and had no impact on them) because, in the absence of Sterling Misconduct, they could not relate to the reference rate sold by Barclays to the Company, being 3MSL.

99. The Company's case is that the Regulatory Findings are the product of careful plea-bargaining by Barclays and cannot properly be relied upon to delimit Barclays' liability or restrict in any way a full inquiry into its Sterling Misconduct by the court.

100. Such reliance upon the Regulatory Findings in Graiseley was also based on a false premise, namely that full disclosure of all material facts was made to the Regulatory Authorities.

Non-disclosure to the Regulatory Authorities

101. The documentary evidence provided to the Regulatory Authorities was necessarily only a fraction of the relevant communications passing between the relevant Barclays' personnel on a daily basis because:
    a. Barclays' employees were acutely aware that their calls (save mobile calls) were recorded and their emails were saved and they preferred to communicate off-line.
    b. Most of the individuals worked next, or in close proximity, to each other as part of a large open-plan trading floor at Barclays' London office at Canary Wharf such that written or telephonic communication was unnecessary and/or inappropriate in any event.
    c. There were strong social connections between many of them, rendering it easier to keep such conversations confidential.
    d. Accordingly, the vast majority of relevant communications were oral and unrecorded ("**Unrecorded Material**").

102. Based on the contents of the recorded material and the overwhelming likelihood that it formed only a small sample of the relevant communications, the court will be invited to find that the Unrecorded Material would reveal a prolonged, systemic and deliberate practise of making false LIBOR submissions for various purposes, none of which were justifiable or valid.

103. Moreover, Barclays did not disclose to the Regulatory Authorities all the recorded material. It is inferred (from the absence of any express reference within published

findings of the Regulatory Authorities) that Barclays did not disclose to the Regulatory Authorities or the Treasury Committee:

a. the existence of its own proprietary tax-exempt off-shore hedge fund called The Ricardo Fund Limited which served as a feeder fund to its wholly-owned entity, The Ricardo Master Fund Limited ("**RMF**") (both Cayman Island exempted companies); or

b. as described below, its traders' and employees' motives and/or conduct in manipulating sterling LIBOR, including 3MSL, for the benefit of RMF.

RMF

104. In an announcement made on the internet on about 15 June 2009, Barclays' then President (BarCap), Jerry del Missier, described RMF as Barclays' "global interest rate portfolio".

105. RMF was organised by Barclays in such a way as to limit or avoid:

a. direct regulatory oversight;

b. licensing requirements; and

c. public disclosure of its investment activities.

106. Mark Dearlove, who was described by Barclays as the "pioneer member of the Ricardo Fund ... instrumental in setting up as well as the smooth running of the Fund":

a. had been recruited to Barclays by Bob Diamond to whom he reported;

b. was the managing director of Barclays Capital Strategic Advisers Limited ("**BCSA**") which was RMF's investment manager; and

c. was, in turn, the line manager responsible for the Sterling Submitters and also Barclays' dollar LIBOR submitters, headed up by Peter Johnson ("**PJ**").

107. Having been traded unsuccessfully for outside investors since 2005, by early 2007 RMF had ceased to trade. On 1 March 2007 Barclays re-launched RMF by investing $100 million in RMF and became its sole owner and beneficiary.

108. Thereafter, all management fees, performance fees and net profits incurred in respect of RMF's trading were paid/payable to or for Barclays.

109. RMF operated as follows:

a. In April or May 2007, Mr Quan Hui Lee ("**QL**") (who was based in Barclays' London office at Canary Wharf) was appointed as its portfolio manager.

b. PS, as the head sterling LIBOR submitter for Barclays, was an adviser to RMF and attended its board meetings. From time to time he also made purchases on its behalf.

c. IP, as the second of the Sterling Submitters, worked closely with QL and RMF.

d. BCSA existed principally, if not exclusively, to serve RMF and its directors from time to time, including members of Barclays' senior management: Bob Diamond, Jerry del Messier, Rich Ricci and others.

e. PS, Mark Dearlove and John Porter attended RMF meetings in Singapore and Japan and relayed relevant information back to members of the Barclays' board in London.

f. From 18 May 2008 the Singapore Branch of Barclays (where QL had been posted from London in around March 2008) was appointed as sub-manager to RMF and received a share of the investment management fees and performance fees.

110. As stated in paragraph 103 above, the Company infers that the existence of RMF was not revealed to the Regulatory Authorities in the course of their investigations into Barclays' LIBOR manipulation. Whilst Barclays made references to RMF in its solicitors' letter dated 9 May 2013 to the Monetary Authority of Singapore ("**MAS**") headed "Investigation into Quan Hui Lee"' ("**Singapore letter**"), as far as the Company is aware, Barclays did not disclose to MAS that:

a. RMF was Barclays' own off-shore hedge fund; and/or

b. the subject of the MAS investigation, QL, was RMF's portfolio manager.

Such disclosure would have changed the complexion of the Singapore Letter. It is inferred that Barclays wished to avoid an investigation into the RMF.

RMF Strategy – to profit from low LIBOR rates

111. After it had been taken over as Barclays' own proprietary fund, one of the key strategies of RMF was purchasing and holding a substantial amount of short-dated UK bank certificates of deposit (or CDs) ("**RMF Strategy**").

112. The profitability of the RMF Strategy depended upon the fall of sterling LIBOR rates and 3MSL in particular. RMF benefited as those rates and CD rates dropped - driving down the rates reduced its cost of funding the CDs and thereby increased the spread the fund captured from the difference between the higher fixed rate interest received on the Sterling CDs held by RMF and the LIBOR rates used as the reference rate in the swap market.

113. As at 31 December 2007, the balance sheet of the RMF disclosed investments of around $4 billion. During the second half of 2007 "the RMF entered into positions, through the Swap market, to benefit from lower interest rates", returning Barclays 13.4% for the year. Specifically:

> *"During the credit crisis, especially for the period August through November, the spread between "LIBOR"...and [sterling] funding rates like SONIA..widened to record highs. Due to the determination of global Central Banks to manage LIBOR rates lower, the [RMF] accumulated predominately CDs ("Certificate of Deposit") issued by Financial Institutions (Rating of AA or above) with a maturity of 6 or 12 months. Equally the Fund entered into positions, through the Swap market, to benefit from lower interest rates. The assessment was that the Bank of England's Base rate of 5.75% during the period 5th July 2007 – 6 December 2007 was too restrictive for the economy as a whole and particularly for the financial sector".*

114. Within this strategy, the RMF depended for its profits on low 3MSL.

115. Approximately 18 months later in August 2009, it was recorded, by reference to a chart showing only the movement in 3MSL between August 2007 and August 2009, that the RMF Strategy was declared "closed":

> *"the game was over. It was the most profitable trade for the Fund over the last 2 years. When the Fund first started with this strategy, it was possible to get papers at above 6%. Now one would be lucky to get anything near 1%."*

116. The same Report in August 2009 recorded that RMF:

"continued to liquidate short-term UK papers ...with the normalisation of LIBOR, lower absolute rates and high funding costs, the carry in these papers no longer made good trades".

117. The "normalisation" of LIBOR was a reference to the end of the downward spiral of LIBOR rates, including downward manipulation by Barclays and other submitting banks on the BBA panel.

118. By the time LIBOR had "normalised", Barclays had secured a position which had resulted in:
    a. the return of its investment of approximately £100 million;
    b. a dividend payment to Barclays of a further $98.1 million (paid in May 2012) as (what Barclays described as its) "hefty profits"; and
    c. management and performance fees paid to Barclays (BCSA) in excess of $20 million.

119. Barclays' profits and gains made out of abnormal LIBOR rates were primarily made from abnormally low 3MSL.

120. The RMF Strategy based on the progressive reduction and maintenance of low LIBOR rates was irreconcilable with the financial interests of many of Barclays' customers to whom it had sold swaps, including the Company – the lower the LIBOR rates, the higher the MTM and therefore the greater the risk to their customers' survival.

Conflicts of duty and interest - No information barriers

121. Barclays placed no information barriers between the Sterling Submitters and the RMF.

122. On the contrary, the Sterling Submitters (sometimes through another Barclays' employee, James Mernagh, as intermediary) were in constant communication with QL and other Barclays' traders seeking to gain market knowledge and advantage for RMF and the RMF Strategy.

123. Further, the Sterling Submitters, together with their supervisors, Mr Dearlove and Mr Porter:
    a. advised RMF as to actions it should take and positions it should adopt in relation to LIBOR; and

b. were in perpetual and irreconcilable conflict between:

   i. their duty to ensure that Barclays made accurate and confidential sterling LIBOR submissions, and

   ii. their interest in securing low LIBOR rates for Barclays as their employer in its capacity as sole beneficial owner of RMF.

124. It is inferred from Barclays' overall improper and systemic misconduct in relation to LIBOR and EURIBOR (as recorded in the Published Materials, including the contents of the press release of the European Commission dated 4 December 2013, and the contents of the Singapore Letter) that:

   a. the Sterling Submitters routinely and openly informed QL and the RMF traders of their intentions in relation to LIBOR; and

   b. QL and the RMF traders successfully influenced the manipulation of LIBOR and, in particular, 3MSL for the benefit of RMF.

RMF benefitting from the manipulation of LIBOR

125. Profits made for Barclays through RMF from falls in sterling LIBOR, coupled with the dual roles of the Sterling Submitters, placed Barclays in a unique position to gain from the manipulation of sterling LIBOR submissions and rates (the Company reserves the right to plead after disclosure that the facts and matters described in paragraphs 126 to 137 below constituted unlawful market abuse by Barclays within the meaning of section 118 of FSMA).

126. Such gains could and would take many forms depending on the context. According to the version of these particulars served in Graiseley, whilst at a retirement lunch in Islington on Wednesday 29 October 2008, PS received notification of what Barclays calls the October 2008 Instruction (being the communication which is said to have originated from the Bank of England on the same day, as referred to in the Published Materials) from the managing director of RMF, Mark Dearlove. The call was mobile to mobile and thus not recorded. It was established between them they would take a week to achieve the lowering of the LIBOR rate.

127. It is inferred from the following facts and matters that it was agreed that, if Barclays moved quickly, this confidential advanced notice that LIBOR rates would be lowered artificially could be used to make substantial profits for Barclays, including RMF.

a. Whilst (it is inferred) still in Islington, at about 3:46pm on 29 October 2008 PS called Barclays' trader, Kenneth Baynes, on his mobile phone and informed him to make as many investments as he could for Barclays' benefit using the unpublished confidential information that LIBOR rates would plummet:

> *"... I've been told to get LIBOR rates down and PJ has as well... its political from very very high so Its Tucker calling the fucking tune, okay. Which means if you can get a hold of any paper, we do it in the one year, okay? ... . If you can get hold of anything do it and well, if i can split half with you that's fine... tell the boys to drop the bids down by thirty or forty ticks. We gonna be giving ones, fours FRAs like no tomorrow....So if you see any paper out there and you can get hold of it and do the thing, just fucking do it, alright. [on being told by Banes that he had to obtain permission on every trade] Yeah, I know whatever you can do mate. I'm fucking hell, I wish I was back there but I'm not...."*

b. At about 4:29pm on the same day PS called IP to confirm that they would keep the LIBOR rates up for a week:

> *"So you got the prices, yeah?"*
>
> *[IP] "Yeah, right down, "I've got the ones down at five and a quarter .. threes down at five and a half ."*
>
> *[PS] ". Well between you and me, we're the political . get LIBORs down . I want to keep things up for the uh, month-end . I just said 'Look, it will take us a week to get LIBORs down' . So, we do it gradual . wait for the month end, then we keep them up . Get our stuff through there . Then you can drop them hard and fast . and if people ask questions . don't know nothing about it .we'd like to keep the LIBORs up for the month end ."*

c. On the following day, PS emailed QL (who was on leave at the time) to inform him of the confidential information:

> *"we have been asked to get our libor down from very high sources - regardless of cash flows - not for repeating !!"*

d. In effort to provide an innocent explanation for divulging this confidential information to a trader such as QL, according to the version of these particulars served in Graiseley, PS asserts that he did so to "*provide market colour to a colleague and to vent my frustration*". The Company's case is that QL was informed so that he could use the information to make substantial profits for RMF by purchasing as many CDs as he could whilst the Sterling Submitters

delayed implementing the General Instruction to enable him to do so at a substantial profit to Barclays.

128. Whilst LIBOR rates were kept up to accommodate Barclays' trading positions, RMF invested approximately £500-600m in CDs as follows:
    a. £200m on Thursday 30 October 2008.
    b. £100m on Friday 31 October 2008 (QL having emailed PS stating that "[RMF has] *got to get in front of the crowd*").
    c. $200m on Thursday 6 November 2008.
    d. $100m on Friday 7 November 2008.

129. Thus, on 5 November 2008, QL emailed BCSA (Simon Lacey):

    "fingers crossed. Great start so far."

    QL received the response:

    "well done Quan keep up the good work".

130. On 6 November 2008, PS emailed QL:

    "bought a total of £5.0bn at about 4.65 as can also use in usd taff . I'm pushing libor rates down today".

    Q L responded:

    "Anything we can get is going to be profits."

131. On about 6 November 2008 alone, RMF made profits of $17 million out of the fall of 3MSL.

132. On 7 November 2008, QL returned from his leave and emailed the trader Mr Alfano (a managing director of BarCap):

    "we pushed all the right things for the fund."

133. Further emails on 7 November 2008 reveal:

    PS to QL: *"Same rules apply as before - no names and libors will be coming down - the political will won't be stopping 100m done for you".*

    PS to QL: *"Libors will slowly come down so be patient."*

    PS to QL: *"The political pressure on the banks to lower libor will be unrelenting. suggest 3 month runs out of jan - the levels look dreadful but it will work."*

Q L to J Imori: "*For the Fund, we bought lots of £ CD. So the fund is OK with AU short.*"

J Imori: "*No liquidity still but just rates are lower. Lowering Libor is good, but what is 'Libor'? COF for PJ's rate is over 4%. The market is still malfunction.*"

134. On 10 November 2008 the RMF monthly report indicated that:

"in the last 3 weeks, GBP LIBOR fell dramatically. The 150 bp surprise rate cut by the BoE helped a lot . At the very least, Mervyn King gave the Fund its best day ever as LIBOR and CDs rates dropped 100bp".

135. It is inferred that the Unrecorded Material would reveal a constant recognition by the Sterling Submitters that the lower they and other panel banks pitched their submissions, the more praise from their colleagues and benefit to Barclays they would achieve. The court will be invited to infer that the sentiment "*great for us*" in the following recorded communication between PS and QL on 4 December 2008 was also typical of the common goal which would have characterised the Unrecorded Material:

PS: "*moved 3 s down about 25bp and stopped*".

QL: "*25bp??? That's quite a bit....Your're right pressure to lower rates is massive. Looks like 3ml will be @ 3% easily*".

PS: "*exactly – more to come*".

QL: "*Great for us!*".

Knowledge of senior management

136. In circumstances where Barclays is intent on artificially delimiting its Sterling Misconduct by reference to the Regulatory Findings and having regard to the likely nature and extent of the Unrecorded Material, it is impossible at this remove to reconstruct with any accuracy the true extent of Barclays' Sterling Misconduct.

137. Nevertheless, the Company relies on the following facts and matters in support of its claim that Barclays was alert at all times to the sterling LIBOR rates and Sterling Misconduct.

a. Barclays' senior management had set up and used BCSA, principally if not exclusively, to enable them both to oversee RMF and also as a conduit for the payment of management fees and performance fees in respect of its own proprietary fund.

b. Barclays's senior management had appointed all its senior employees responsible for sterling LIBOR submissions as directors of, or advisers to, RMF (including Mr Porter, Mr Dearlove, Mr Alfano, and PS).

c. From around August 2007 to the October 2008 Instruction, the interests of RMF in making profits out of low sterling LIBOR rates were an ever-present factor which Barclays wrongly caused or allowed to influence the Sterling Submitters.

d. From 29 October 2008, the substantial profits which RMF was caused or allowed to generate by exploiting the confidential information represented by the October 2008 Instruction were secretive and the Company's case is that it is inherently unlikely that it was not authorised without the knowledge and consent of senior management.

e. In its effort to create a closed circle of admissions by plea-bargaining the Regulatory Findings, Barclays concealed the existence of RMF, its purposes in relation to LIBOR rates and its profits from the Regulatory Authorities.

f. During its own global investigation into LIBOR manipulation for the Regulatory Authorities, Barclays failed to investigate QL/RMF or to disclose records of QL's communications relevant to RMF.

g. In particular, Barclays failed:

    i. save for document collection purposes, to interview QL as part of its £100 million global investigation into LIBOR;

    ii. to search, collect or review QL's documents and audio files;

    iii. (according to the version of these particulars served in Graiseley) to provide such disclosure in Graiseley until required to do so by specific directions by the court on 6 December 2013 and 31 January 2014;

    iv. during the internal disciplinary hearings of Barclays relating to improper LIBOR manipulation, to refer at any time to QL's conduct on behalf of RMF (or even of RMF); and

    v. (also according to the version of these particulars served in Graiseley) to give disclosure to the Graiseley claimants of QL's audio files responding to searches such as "Ricardo".

h. Despite the knowledge of senior management over a long period from at least the end of August 2007 that LIBOR rates in all major currencies were palpably false, there is no contemporaneous email, minute or other document recording concern of Barclays' senior management to ensure that Barclays' own conduct in this respect is eradicated or otherwise addressed, still less steps taken to achieve that end.

i. Barclays' actions and its consequent profits derived from betting its own funds on low sterling LIBOR, and in particular low 3MSL, pursuant to the Ricardo Strategy render inherently improbable Barclays' assertions that its senior management were unaware that LIBOR rates were false.

138. Having regard to the facts and matters set out in paragraphs 96-137 above, Barclays' case in relation to Sterling Misconduct (if it remains as it was pleaded in Graiseley) is neither credible nor supported by the available evidence.

Knowledge of falsity

139. Having regard to the Published Materials and to the facts and matters pleaded in paragraphs 96 to 138 above, it is the Company's case that during the Material Period members of Barclays' management and senior management:

a. knew that the LIBOR Representations were false, alternatively

b. had no or no honest belief in the truth of the LIBOR Representations and/or were reckless as to whether or not the LIBOR Representations were true.

Following disclosure the Company will set out in an appendix a list of the relevant managers and senior managers insofar as it is able to do so. The list will include the individuals named in paragraphs 96-137 above.

140. Further, those members of Barclays' management and senior management were aware during the Material Period of the following facts and matters.

a. In the course of its business Barclays was agreeing with customers, including the Company, that they should enter into facility agreements and interest rate hedging contracts, containing payment obligations referenced to LIBOR, and Barclays was sending Reset Advices referenced to LIBOR.

b. It would be, or was likely to be, of importance to such customers in relation to any transaction with Barclays referenced to LIBOR, that LIBOR was not subject to, and would not during the term of any interest rate hedging product referenced to LIBOR be subject to, any improper influence or manipulation or conduct likely to undermine its integrity, whether by Barclays or by anyone else.

c. The LIBOR Representations were being made to customers in the course of Barclays' business and/or that it was likely that such representations were being made.

d. The LIBOR Representations were being made with the intention that they would be relied upon by customers and/or it was likely that they would be relied upon by customers.

141. Further, during the Material Period, Barclays' senior management:

a. took no steps to ensure that those agreeing on behalf of Barclays to enter into interest rate hedging products referenced to LIBOR and those responsible for sending Reset Advices referenced to LIBOR, were aware of the true facts concerning the LIBOR Representations and the manner in which the rate was being determined,

b. were aware that, in failing to take such steps, those agreeing on behalf of Barclays to enter into interest rate hedging products referenced to LIBOR and those responsible for sending Reset Advices referenced to LIBOR would be prevented from disclosing, rendered unable to disclose and were not in fact disclosing the truth to actual and potential customers including the Company, and

c. thereby caused or permitted the false LIBOR Representations to be made to actual and potential customers, including the Company.

Attribution of knowledge

142. It is the Company's case that the knowledge of management and senior management pleaded above was held at a sufficiently high level within Barclays' management structure that Barclays is to be attributed with:

a. knowledge that the LIBOR Representations were false, alternatively

b. an absence of any, or any honest, belief in and/or recklessness as to the truth of the LIBOR Representations.

143. In support of its case as to attribution of knowledge and/or recklessness, the Company will rely on all the facts and matters pleaded above, and also the following.

a. The scale and duration of Barclays' attempts to fix LIBOR apparent from the Published Materials.

b. References in the Published Materials to the management "*directive*", the reference to "*upstairs*" and "*internal political pressure*", and to guidance from the "*31st Floor*", indicating that the actual or attempted fixing of LIBOR was known at a very high level of management within Barclays.

c. The knowledge gained by and available to, persons within Barclays who had management and control over LIBOR submissions to the BBA and/or traders who made requests to LIBOR submitters (being the individuals to be listed in an appendix following disclosure).

d. The knowledge gained by managers within Barclays' "*Compliance Department*" who were aware of the actual or attempted fixing of LIBOR as apparent from the Published Materials.

Fraudulent misrepresentation

144. In the circumstances pleaded above, Barclays made the LIBOR Representations fraudulently.

Negligent misrepresentation

145. If (contrary to the Company's primary case) it be found that the LIBOR Representations were not made fraudulently, the Company's case is as follows.

a. In the circumstances pleaded above, the LIBOR Representations were made without reasonable grounds for believing that they were true and they were made negligently.

b. Pursuant to section 2(1) of the Misrepresentation Act 1967 it is for Barclays to prove that it had reasonable grounds to believe and did believe up to the time that each Swap was entered into, that the LIBOR Representations were true.

c. Further, having made the LIBOR Representations knowing and intending that they would be relied on by the Company in connection with the 2005 Hedges and the 2007 Swap as pleaded above, Barclays owed the Company a duty of care to ensure that the LIBOR representations were true.

146. By reason of the facts and matters pleaded above under the heading "Particulars of Falsity of LIBOR Representations", Barclays acted in breach of that duty of care and was negligent.

Implied LIBOR Terms

147. Further or alternatively, the following were implied terms of the 2005 Hedges and the 2007 Swap (the "**Implied LIBOR Terms**").

a. Barclays' own participation in the setting of 3MSL was and would in the future continue to be, an honest one.
b. Barclays would not in the future (and, in particular, during the term of the Swap):
   i. make false or misleading LIBOR submissions to the BBA in respect of 3MSL, or
   ii. seek improperly to influence or manipulate 3MSL or engage in conduct which was likely to undermine its integrity, and
c. if, in the future, Barclays had any reason to believe that LIBOR represented anything other than a rate within the BBA LIBOR Definition it would disclose that information to the Company and would not withhold or conceal it.

Breach of the Implied LIBOR Terms

148. By reason of the facts and matters pleaded above under the heading "Falsity of LIBOR Representations" and by reason of its failure to disclose to the Company the truth as to its involvement in LIBOR manipulation, Barclays acted in breach of the Implied LIBOR Terms.

The Suitability & Protection Representations

149. By advising the Company to enter into the 2005 Hedges and the 2007 Swap as pleaded above, MM and/or PR expressly and/or impliedly represented to the Company that the 2005 Hedges and 2007 Swap:
   a. were suitable for the Company and to the extent that this was a matter of opinion, each of MM and/or PR had reasonable grounds for holding this opinion (**"the Suitability Representation"**),
   b. would provide financial protection for the Company and to the extent that this was a matter of opinion, each of MM and/or PR had reasonable grounds for holding this opinion (**"the Protection Representations"**).

150. MM and/or PR were each in a far stronger position than MH and/or PH to assess the suitability and degree of protection afforded by the 2005 Hedges and the 2007 Swap, such that the Suitability Representations and the Protection Representations:
   a. would have been reasonably understood as carrying with them the implied representation that they applied to all interest rate hedging contracts offered by Barclays and carried with them an implied representation to that effect; and

b. to the extent that this was a matter of opinion, MM and/or PR impliedly represented that they each had reasonable grounds for holding that opinion.

151. The Suitability Representations and the Protection Representations were made intending that the Company would and should rely on them when entering into the 2005 Hedges and the 2007 Swap.

152. The Suitability Representations and the Protection Representations were false, in that for the reasons already pleaded above the 2005 Hedges and the 2007 Swap were not suitable for the Company and in fact imposed financial risks and burdens which far outweighed any protection which they provided against fluctuations in interest rates.

153. The Suitability Representations and the Protection Representations were made negligently without having reasonable grounds for believing that they were true, in that MM and PR were each aware, or ought to have been aware, of the features of the 2005 Hedges and the 2007 Swap that made them unsuitable and financially onerous for the Company.

Reliance on the Suitability & Protection Representations

154. The Company was induced by and acted in reliance on the Suitability Representations, the Protection Representations and the advice given by MM and PR pleaded above, in deciding and agreeing to enter into the 2005 Hedges and the 2007 Swap.

Advisory duties owed by Barclays to the Company

155. By agreeing to advise the Company and/or by proffering advice to the Company (as pleaded above), Barclays owed the Company a contractual duty:
    a. to advise the Company on the merits and suitability of the 2005 Hedges and the 2007 Swap, and of the material risks of entering into them, before the Company entered into them, and
    b. to exercise reasonable skill and care when giving such advice.

156. Further or alternatively, Barclays owed the Company an equivalent duty of care at common law in the tort of negligence.

157. In particular, Barclays' duty of care included the following.

a. A duty to take reasonable care to ensure that any statement or representation as to the structure, benefit and merits of Barclays' interest rate hedging products was materially accurate, not incomplete or misleading and that there was sufficient detail to enable the Company to make an informed decision.
b. Further or in the alternative, a duty to explain fully and accurately the nature and effect of the transactions proposed to the Company.
c. A duty to exercise all due care and skill in and about making any recommendation to the Company to enter into any interest rate hedging product and/or in advising the Company on the structure and merit/benefit and risks of any interest rate hedging product.

158. The Company relies on the following matters in support of the above duties.
a. Barclays' TOB confirmed that the Company was classified as a retail customer for the purpose of the FSA rules and was therefore entitled to be afforded the highest level of regulatory protection.
b. By his letter dated 14 July 2005 PR expressly confirmed that Barclays would provide advice to the Company.
c. Clause 4.1 of Barclays' TOB expressly provided for circumstances in which Barclays agreed to advise the Company.
d. As pleaded above, PR and MM did in fact provide advice to the Company in connection with the 2005 Hedges and the 2007 Swap in the course of meetings and correspondence with the Company.
e. Barclays presented PR and MM to the Company as specialist advisers.
f. In the premises, a person in the position of MH and PH would have reasonably understood that Barclays (through PR and MM) was advising the Company on the various options for hedging interest rate risk on offer by Barclays and on the merits, suitability and material risks.
g. As Barclays knew or should have known, not all of the advantages, disadvantages and material risks of the various interest rate hedging products on offer by Barclays and the consequences of entering into them would have been readily apparent to or understood by MH and PH.
h. There was a significant imbalance between the level of the knowledge and understanding of PR and MM of Barclays' various interest rate hedging products and the level of knowledge and understanding of MH and PH.
i. The Company was liable to sustain substantial financial detriment if it entered into an unsuitable interest rate hedging contract with Barclays.

j. PR and MM knew or should have known that the Company was not taking independent advice in relation to the interest rate hedging products on offer for Barclays and such advice was not readily available to it.

k. The 2005 Hedges and the 2007 Swap were each highly risky.

Breach of advisory duty

159. Barclays breached the contractual and common law duties pleaded above and was negligent. The Company will rely on the particulars already pleaded above, together with the following further particulars.

a. As Barclays knew or ought to have known, there was a material risk that interest rates would fall and would be very low for a sustained period during the term of the 2005 Hedges and/or 2007 Swap. Barclays failed to advise the Company of that risk.

b. Barclays failed adequately to advise the Company of the potential size of the break costs payable by the Company to terminate the 2005 Hedges and/or the 2007 Swap. Barclays gave the Company no indication of the actual or estimated level of break costs in a sustained low interest rate environment.

c. Barclays failed to advise the Company that the complex nature of the 2005 Hedges and 2007 Swap would materially increase the Company's contingent liability for break costs compared with an ordinary interest rate swap such as a cap.

d. Barclays failed to advise the Company that the break costs under the 2005 Hedges and 2007 Swap would be significantly greater than under an ordinary interest rate swap such as a cap.

e. Barclays failed to advise that the Company's contingent liability in respect of break costs would be secured by the security provided by the Company in respect of the Loan and Overdraft, and that this secured liability could prevent the Company from refinancing its borrowings with an alternative lender or raising further borrowing to finance its development plans.

f. Barclays failed clearly to explain to the Company that its contingent liability in respect of break costs could trigger breaches of the financial covenants in the Loan.

g. Barclays emphasised the benefit of the initial interest rate payable by the Company without giving equal emphasis to the downside that the Company could find itself paying an enhanced interest rate in a low interest rate environment for many years.

h. Barclays failed to explain to and/or warn the Company of the risk that the LTV covenant relating to the Loan might be breached on account of adverse increases in the MTM value of the 2005 Hedges and the 2007 Swap which would be wholly outside the Company's ability to control.

i. In the premises, Barclays failed to give a balanced and appropriately detailed explanation of the advantages, disadvantages and material risks of the 2005 Hedges and the 2007 Swap so as to enable the Company to make an informed decision as to whether or not to enter into the transaction.

j. Barclays made a personal recommendation that the Company enter into the 2005 Hedges and the 2007 Swap despite the fact that it was unsuitable for the Company as pleaded above.

k. Barclays failed to draw the Company's attention to more suitable products that matched the term and amount of the lending, in particular a cap.

l. Barclays made the Suitability Representations and the Protection Representations in circumstances where it knew or should have known that they were untrue, as pleaded above.

160. In the premises, Barclays

a. failed to have due regard to the Company's interests and treat it fairly (as required by PRIN 2.1.1R);

b. failed to communicate information concerning the 2005 Hedges and 2007 Swap to the Company in a way that was clear, fair and not misleading (as required by PRIN 2.1.1R and COB 2.1.3R);

c. failed to take reasonable steps to ensure that its personal recommendation of the 2005 Hedges and the 2007 Swap was suitable (as required by PRIN 2.1.1R and COB 5.3.5(1)R); and

d. made a personal recommendation in relation to the 2005 Hedges and 2007 Swap without having taken reasonable steps to ensure that the Company understood the nature of the risks involved (as required by COB 5.4.3R).

161. The Company will rely at trial on the FSA report dated March 2013 entitled Interest Rate Hedging Products – Pilot Findings (**"the FSA Report"**), which recorded the FSA's expectations of banks arranging and advising on the sale of interest rate hedging products and specified:

> *'We would, for example, expect ...The bank [to] provide[d] the customer with appropriate, comprehensible and fair, clear and not misleading information on the features, benefits and risks associated with the IRHP in good time before*

the sale....If the IRHP exceeds the term or value of any lending arrangements, the potential consequences were disclosed to the customer in a comprehensible and fair, clear and not misleading way....In relation to an advised sale: A) The bank has obtained sufficient personal and financial information about the customer, including the customer's investment objectives, level of education, profession or former profession and relevant past experience of IRHPs. B) The bank has taken reasonable steps to ensure that the personal recommendation is suitable for the customer'.

162. As to disclosure of break costs information the FSA Report stated:

'One of the most significant issues in assessing the compliance of a sale is break costs (or 'exit costs'). The nature of IRHPs means the scale of any break costs is inherently uncertain as, depending on market conditions, the customer may have to make a payment to the bank or the bank may have to make a payment to the customer. In the pilot we found that in a high proportion of sales customers were not given sufficient information to enable them to understand the potential size of the break cost. We saw examples in the pilot where the break cost exceeded 40% of the value of the underlying loan. Our view is that, for the disclosure of break costs to comply with our regulatory requirements, the bank should be able to demonstrate that: ...In good time before the sale, the bank provided the customer with an appropriate, comprehensible and fair, clear and not misleading disclosure of any potential break costs'.

163. Where a transaction requires redress in the form of a re-written trade, the FSA Report stated:

'The alternative product would not have had potential break costs in excess of 7.5%, in a pessimistic but plausible scenario, of the amount hedged at the point of sale – this is because we believe that, if the original sale had complied with our regulatory requirements, customers would have not entered into a product with potentially sizeable break costs. This principle is for the purpose of this redress exercise only and does not represent a change of our rules in this area or the setting of new guidance.'

164. Further, the level of information, explanation and advice which a bank seeking to comply with the above duties is required to provide to a customer such as the Company will be a matter for expert evidence.

Breach of duty in the sale of Mount Pleasant

165. It was an implied term of the October 2008 Agreement (for the Company to market and sell Mount Pleasant on the best terms reasonably available) that Barclays would not do any act which would prevent the Company (or place an unreasonable obstacle on the Company) arranging a sale of Mount Pleasant on the best terms reasonably available.

166. Further, having required the Company to arrange a sale of Mount Pleasant on the best terms reasonably available, in its capacity as mortgagee of Mount Pleasant, Barclays owed the Company a duty in equity:
    a. to act in good faith, and
    b. not to act capriciously or in such a way that no reasonable banker acting reasonably would act

    in responding to any request by the Company to agree to release its mortgage on Mount Pleasant (whether in whole or part) so as to facilitate the sale.

167. Barclays acted in breach of contract and in breach of its duties in equity by refusing consent to the proposed sale of Mount Pleasant to Mark and Sally Barney in May 2009. In so far as it may be necessary for the Company to prove that Barclays acted in bad faith, pending disclosure the Company infers from the absence of a rational basis for the refusal of consent, that Barclays (by Mr Hyde) acted in bad faith and a desire (for reasons currently unknown to the Company) to make it less likely that the Company would be able to re-finance and re-bank with another bank, and more likely that the Company would be forced into administration.

Failure to account

168. In terminating the 2005 Hedges Barclays acted as agent for and on behalf of the Company with a duty to account to the Company for all sums properly payable to the Company as a result of the termination of the 2005 Hedges.

169. On its own admission (as to which the Company will refer to Barclays' letter to the Company dated 22 June 2005 pleaded above under the heading "The 2007 Swap"), Barclays has failed to account to the Company for all sums properly payable to the Company which exceed the sum received by the Company in July 2007 of about £75,000.

Rescission

170. By reason of the misrepresentations made by Barclays to the Company, comprising:
    a. the LIBOR Representations,
    b. the Suitability Representations,
    c. the Protection Representations

    the Company was at all material times entitled to (and in so far as it has not already done so, the Company does now) rescind the 2007 Swap and/or seek damages in lieu of rescission pursuant to section 2(2) of the Misrepresentation Act 1967.

171. Barclays is liable to make restitution to the Company of:
    a. the net amount paid to Barclays under the 2007 Swap, and
    b. the total break costs paid to terminate the 2007 Swap

    (Barclays already has details of these sums and particulars will be provided by the claimants following disclosure and/or exchange of expert evidence).

Termination

172. Further or alternatively, Barclays breached:
    a. the Implied LIBOR Terms, and
    b. contractual duties pleaded above

    and the breaches went to the root of the 2005 Hedges and the 2007 Swap, and entitled the Company to treat itself as discharged.

Causation, loss and damage

173. By reason of Barclays' misrepresentations, breach of contract and negligence, the Company has suffered loss and damage.

174. If Barclays had not made the misrepresentations and/or breached its contractual and common law duties:
    a. the Company would not have entered into the 2005 Hedges or the 2007 Swap and no LIBOR-based hedging instrument would have been entered into at all;
    b. in the alternative, the Company would have entered into a suitable hedging instrument that matched the terms and amount of its borrowings and did not expose it to undue risks in the event of falling interest rates.

The identity of suitable alternative hedging and instruments and their pricing are matters for expert evidence. Further particulars will be provided in due course once the Court gives permission for expert evidence pursuant to CPR Part 35. At present the Company believes they are likely to comprise (in 2005) a 5 year cap for a notional starting sum of £3m and/or (in 2007) a 3 year cap for a notional starting sum of £3m.

175. In the circumstances the Company claims the following sums in connection with entry into the 2007 Swap ("**Swap Losses**").
    a. The net amount paid to Barclays under the 2007 Swap (in so far as Barclays is not otherwise obliged to make restitution of these amounts).
    b. The total break costs paid to terminate the 2007 Swap (in so far as Barclays is not otherwise obliged to make restitution of these amounts).In the alternative, the difference between the net amounts paid to Barclays under the 2007 Swap and the amounts that the Company would have paid under a suitable alternative hedging product. .

176. Further, the Company should be restored financially to the position it would have been in had Barclays not transferred its accounts to BBS but had instead reimbursed the Swap Losses ("**Business Failure Losses**"). The Business Failure Losses will also be the subject of expert evidence in due course as to the quantum of the following heads of damage (preliminary details of which have already been provided to Barclays for the purpose of the Company's claim for consequential losses in the FCA Review and which are the source of the figures pleaded below, but which will be subject to review and may be subject to change once expert evidence has been permitted and obtained for the purpose of these proceedings):
    a. BBS Costs (including stopped and return charges, various BBS management fees and lending fees) totalling no less than £228,000.
    b. Professional advisers' fees (including fees paid to KPMG, sales agents, EDR Financial Management, Saint & Co accountants, Bay Business Consultancy Ltd, Deloitte, and costs of selling the Parks) totalling no less than £582,500.
    c. the costs of the administration totalling no less than £720,689
    d. the costs of the liquidation totalling no less than £125,000;
    e. the value of the Company to be assessed by reference to the value of its net assets (particulars of which have been provided to Barclays in a report dated 24 October 2014 prepared by John Green of Pierce Forensic Ltd) estimated at £27.2m.

177. Further and in any event:

a. but for Barclays' breach of duty in refusing consent to the sale of Mount Pleasant to Mark and Sally Barney in May 2009, the Company would have been able to refinance its borrowing with Natwest in about July 2009 and in that event the Company would have avoided (and claims as damages and/or equitable compensation) such of the Swap Losses and the Business Failure Losses as post-date July 2009; and

b. Barclays is (and has since July 2007 been) liable to account to the Company for the sum properly payable to the Company on termination of the 2005 Hedges to the extent that this exceeds the sum of about £75,000 already received by the Company (Barclays has calculated the sum due as no less than £69,035 but, despite a request made by the Company by letter dated 16 September 2015, Barclays has not yet provided sufficient information to enable the Company to understand the basis of that calculation).

Interest

178. The Company claims interest under section 35A of the Senior Courts Act 1981 on all sums found to be due to it at such rate and for such period as the court thinks fit.

Relief claimed

The Company therefore claims:

(1) (in so far as may be necessary) a declaration that the 2007 Swap has been rescinded and (in any event) restitution of all monies paid under it;

(2) damages;

(3) equitable compensation;

(4) an account of the sum properly payable on termination of the 2005 Hedges;

(5) interest;

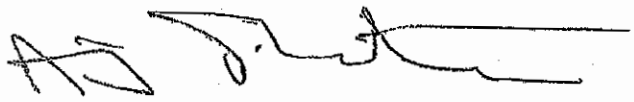
(6) ~~(1)~~ costs; and

(7) ~~(2)~~ further or other relief.

Stephen Davies QC
Neil Levy

STATEMENT OF TRUTH

The claimant believes that the facts stated in these particulars of claim are true. I am duly authorised by the claimant to sign this statement.



.....

Anthony John Maton, partner, Hausfeld & Co LLP, 12 Gough Square, London EC4A 3DW (Tel 020 7665 5000; Fax 020 7665 5001; Ref L0154.0001), solicitors for the claimant.

Dated 28 December 2015

APPENDIX

THE PUBLISHED MATERIALS

United States Department of Justice ("DoJ")

1. A penalty of US$160 million was imposed on Barclays pursuant to a non-prosecution agreement concluded between Barclays and the DoJ Criminal Fraud Section on 26 June 2012 ("**NPA**"). The NPA incorporated a statement of facts which Barclays agreed was true and accurate. The agreed statement of facts included the following admissions in relation to LIBOR as well as EURIBOR (the Euro Interbank Offered Rate being the rate at which Euro interbank term deposits within the Euro zone are offered by one prime bank to another at 11a.m. Brussels time).

   1.1 (paragraph 11) "*From approximately 2005 through 2007, and occasionally thereafter through approximately 2009, certain Barclays swaps traders requested that certain Barclays LIBOR ... submitters submit LIBOR ... contributions that would benefit the traders' trading positions, rather than rates that complied with the definitions of LIBOR ... Those swaps traders either proposed a particular LIBOR ... contribution for a particular tenor and currency, or proposed that the rate submitter contribute a rate higher, lower, or unchanged for a particular tenor and currency. The swaps traders made these requests via electronic messages, telephone conversations, and in-person conversations. The LIBOR ... submitters agreed to accommodate, and accommodated, the swaps traders' requests for favourable LIBOR ... submissions on numerous occasions.*"

   1.2 (paragraph 12) "*From at least as early as June 2005 through approximately September 2007, in New York ... and in London ... several Barclays Dollar swaps traders made frequent requests for favourable Dollar LIBOR contributions to the Barclays Dollar LIBOR submitters on the London money markets desk. From approximately September 2007 through approximately May 2009, such requests were made occasionally. Barclays Dollar LIBOR submitters accommodated the requests on numerous occasions and submitted Barclays's Dollar LIBOR contributions consistent with the requests'.*"

1.3 (paragraph 22) "*Because of the high value of the notional amounts underlying derivative transactions tied to LIBOR ... even very small movements in those rates could have a significant impact on the profitability of a trader's trading portfolio.*"

1.4 (paragraph 23) "*From at least approximately August 2005 through at least approximately May 2008 certain Barclays swaps traders communicated with swaps traders at other Contributor Panel banks and other financial institutions about requesting LIBOR and EURIBOR contributions that would be favourable to the trading positions of the Barclays swaps traders and/or their counterparts at other financial institutions.*"

1.5 (paragraph 30) "*When Barclays swaps traders made requests of Barclays rate submitters in order to influence Barclays's benchmark interest rate submissions, and when the submitters accommodated those requests, the manipulation of the submissions affected the fixed rates on some occasions.*"

1.6 (paragraph 36) "*From approximately August 2007 through at least approximately January 2009, Barclays often submitted inaccurate Dollar LIBORs that under-reported its perception of its borrowing costs and its assessment of where its Dollar LIBOR submission should have been. Certain members of management of Barclays, including senior managers in the treasury department and managers of the money markets desk, directed that the Barclays Dollar LIBOR submitters contribute rates that were nearer to the expected rates of other Contributor Panel banks rather than submitting the proper, higher LIBORs.*"

1.7 (paragraph 42) "*During approximately November 2007 through approximately October 2008, certain employees at Barclays sometimes raised concerns with individuals at the BBA, the Financial Services Authority, the Bank of England, and the Federal Reserve Bank of New York concerning the diminished liquidity available in the market and their views that the Dollar LIBOR fixes were too low and did not accurately reflect the market. In some of those communications, those employees advised that all of the Contributor Panel banks, including Barclays, were contributing rates that were too low. Those employees attempted to find a solution that would allow Barclays to submit honest rates without standing out from other members of the Contributor Panel, and they*

expressed the view that Barclays could achieve that goal if other banks submitted honest rates....after the communications, Barclays continued improperly to take concerns about negative publicity into account when making its submissions."

1.8 (paragraph 42) "*On October 29, 2008, a senior Bank of England official contacted a senior Barclays' manager. The Bank of England official discussed the external perceptions of Barclays's LIBOR submissions and questioned why Barclays's submissions were high compared to other Contributor Panel banks. As the substance of the conversation was passed to other Barclays' employees, certain Barclays managers formed the understanding that they had been instructed by the Bank of England to lower Barclays's LIBOR submissions, and instructed the Barclays Dollar and Sterling LIBOR submitters to do so.*"

1.9 (paragraph 49) "*On at least a few occasions from approximately September 2007 through at least approximately May 2009, Barclays submitted improperly low LIBOR contributions for Yen and Sterling in response to concerns of inaccurate, negative media attention about Barclays's high LIBOR submissions compared to other Contributor Panel banks and a belief within Barclays that other Contributor Panel banks were submitting unrealistically low LIBORs.*"

2. The identity of the traders, submitters and managers at Barclays referred to in the above extracts from the DoJ Statement of Facts will be specified when Barclays discloses those details.

FSA Notice

3. On 27 June 2012, the FSA issued a Final Notice imposing a penalty on Barclays of £59.5 million under section 206 of the FSMA in respect of Barclays' conduct as a LIBOR panel bank following admissions made by Barclays. Those admissions involved agreement of a Warning Notice which included the following.

3.1 (paragraph 57) "*On 22 March 2006, Trader A (a US dollar Derivatives Trader) stated in an email to Manager A that Barclays' Submitter "submits our settings each day, we influence our settings based on the fixings we all have.*"

3.2 (paragraph 57) "*On 5 February 2008, Trader B (a US dollar Derivatives Trader) stated in a telephone conversation with Manager B that Barclays' Submitter was submitting "the highest LIBOR of anybody [...] He's like, I think this is where it should be. I'm like, dude, you're killing us". Manager B instructed Trader B to: "just tell him to keep it, to put it low". Trader B said that he had "begged" the Submitter to put in a low LIBOR submission and the Submitter had said he would "see what I can do".*

3.3 (paragraph 102) " ... *ii. senior management at high levels within Barclays were concerned over the negative media perception of Barclays' LIBOR submissions in September 2007; iii those concerns led to instructions being given by less senior managers to Barclays' Submitters to lower their LIBOR submissions at particular times of market stress in late 2007 and early 2008 in order to avoid negative media comment.*"

3.4 (paragraph 110) "*Barclays' LIBOR submissions were at the higher end of the range of contributing banks during the financial crisis. For example, in the period from 1 September 2007 to 31 December 2008, Barclays' three month US dollar LIBOR submissions were higher than the submissions of 12 other contributing banks on 66% of occasions. Barclays' three month US dollar submissions were either within the highest four contributions or tied with another bank in that position on 89% of occasions.*"

3.5 (paragraph 111) "*The fact that Barclays' LIBOR submissions were higher than those of the other contributing banks drew attention from the media. For example, Bloomberg published an article entitled "Barclays takes a money market beating" on 3 September 2007.16 The article noted that Barclays' LIBOR submissions in three month sterling, euro and US dollars were the highest of all banks contributing LIBOR submissions. The article posed the question 'what the hell is happening at Barclays and its Barclays Capital securities unit that is prompting its peers to charge it premium interest rates in the money market?*"

3.6 (paragraph 112) "*Senior management at high levels within Barclays expressed concerns over this negative publicity. Senior management's concerns in turn resulted in instructions being given by less senior managers to Barclays'*

Submitters to reduce LIBOR submissions in order to avoid further negative media comment."

3.7 (paragraph 113) "*On 4 September 2007, a Submitter indicated in an internal telephone conversation that Barclays' US dollar LIBOR submissions were below the rates at which he saw offers in the market. He indicated in another internal call on the same day that there was 'internal political' pressure on him not to set higher."*

3.8 (paragraph 115) "*Concerns about the media perception of high LIBOR submissions continued at intervals for the remainder of 2007 and throughout 2008. At times of particular market stress this resulted in instructions being given to Barclays' LIBOR Submitters to reduce Barclays' submissions such that they did not stand out too far from the submissions of other contributing banks. This was expressed by Manager D (in Barclays' Group Treasury) as an instruction that Barclays should not 'stick its head above the parapet' in terms of its LIBOR submissions."*

3.9 (paragraph 116) "*As a result, Barclays reduced its submissions on many occasions so that they were not too high compared to other banks."*

3.10 (paragraph 143) *"During this period [October 2008], Barclays continued to believe that other banks were making LIBOR submissions that were too low and did not reflect market conditions. Submitters continued to make comments indicating that Barclays' submissions were being made taking concerns about negative media comment into account until May 2009 (although relevant communications were more sporadic after October 2008)."*

3.11 (paragraph 171) "*On 4 December 2007, a Submitter emailed Manager E, stating ... 'My worry is that we (both Barclays and the contributor bank panel) are being seen to be contributing patently false rates. We are therefore being dishonest by definition and are at risk of damaging our reputation in the market and with the regulators'."*

3.12 (paragraph 176) "*Concerns were again raised to Compliance in relation to an instruction to reduce LIBOR submissions given by senior management on 29 October 2008. This instruction was given following a telephone conversation*

between a senior individual at Barclays and the Bank of England during which the external perceptions of Barclays' LIBOR submissions were discussed."

4. The identity of the traders, submitters and managers at Barclays referred to in the above extracts from the FSA Final Notice will be specified when Barclays discloses those details.

US Commodities & Futures Trading Commission ("CFTC") Order

5. A penalty of US$200 million was imposed on Barclays by an order made by the CFTC dated on 27 June 2012. Barclays consented to the entry of the order. The order contained findings made by the CFTC and included the following facts.

   5.1 (page 7-8) *"From at least mid-2005 through the fall of 2007, and sporadically thereafter into 2009, Barclays, through the acts of its swaps traders and submitters, attempted to manipulate U.S. Dollar LIBOR, and on occasion, Yen and Sterling LIBORs, for certain tenors. Barclays' attempts to manipulate U.S. Dollar LIBOR occurred at time on a daily basis."*

   5.2 (page 11) "... *Barclays conveyed false, misleading or knowingly inaccurate reports that its submitted rates for LIBOR were based on and solely reflected its costs of borrowing unsecured funds in the London interbank money market. Accordingly, Barclays regularly attempted to manipulate and knowingly delivered false, misleading or knowingly inaccurate reports concerning U.S Dollar LIBOR, and at times, Yen and Sterling LIBOR ..."*

   5.3 (page 19) *"During the financial crisis period, Barclays directed its U.S Dollar LIBOR submitters to lower their daily U.S Dollar LIBOR submissions in order to protect Barclays' reputation against what it believed were negative and unfair media and market perceptions that Barclays had a liquidity problem based in part on its high LIBOR submissions."*

   5.4 (page 20) *"The negative media speculation caused significant concern within Barclays and was discussed among high levels of management within Barclays Bank. As a result, certain senior managers within Barclays Bank Treasury ("senior Barclays Treasury managers") instructed the U.S. Dollar LIBOR submitters and their supervisor to lower Barclays' LIBOR submissions, so that*

they were closer to the submitted rates by other banks but not so high as to attract media attention ... The submitters and their supervisor ... understood that they were to follow this directive regardless of market conditions or whether their assessment of Barclays' cost of obtaining unsecured funds dictated their submissions to be otherwise ..."

5.5 (page 21) *"On November 29, 2007 the supervisor of the U.S. Dollar LIBOR submitters convened a telephone discussion with the senior Barclays Treasury managers and the U.S. Dollar LIBOR submitters. The supervisor said if the submitters submitted the rate for a particular tenor at 5.50, which was the rate they believed to be the appropriate submission, Barclays would be twenty basis points above 'the pack' and 'it's going to cause a shit storm'. The supervisor asked that the issue be taken 'upstairs' meaning that it should be discussed among more senior levels of Barclays' management. The most senior Barclays Treasury manager agreed that he would do so ... The following day, the same senior Barclays Treasury manager had another conversation with the senior U.S. Dollar LIBOR submitter, who was again seeking guidance on his submissions. In this conversation, the senior Barclays Treasury manager related his understanding that senior management had discussed the issue and directed them to continue to 'stick within the bounds[,] so no head above [the] parapet'... In early December 2007, Barclays' senior U.S. Dollar LIBOR submitter again warned his supervisor that Barclays was not setting 'honest' rates when making its LIBOR submissions."*

5.6 (page 22) *"... The supervisor directed these concerns to a senior compliance officer and a member of senior management of Barclays ... The Barclays senior compliance officer subsequently has a conversation with the U.K. Financial Services Authority ... After this conversation, the same Barclays senior compliance officer did not follow up internally with the LIBOR submitters or their supervisor to confirm that Barclays was making its LIBOR submissions properly in accordance with the BBA's definition and criteria for LIBOR. Instead, the management directive remained in effect, and in fact, senior Barclays Treasury managers ensured that the U.S. Dollar LIBOR submitters continued to adhere to that directive."*

5.7 (page 23) *"At this time [April 2008], a senior Barclays Treasury manager informed BBA in a telephone call that it had not been reporting accurately,*

although he noted that Barclays was not the worst offender of the panel bank members."

5.8 (page 24) "*In late October 2008 ... Barclays believed it needed to lower its LIBOR submissions even further. As a result, a member of senior management conveyed an instruction to the LIBOR submitters through their supervisor, that Barclays' US Dollar and Sterling LIBOR submissions needed to be lowered to be 'within the pack', meaning Barclays' LIBOR submissions were to be made at or around the same rate as other panel banks ... The LIBOR submitters complied ...*"

5.9 (page 26) "*Throughout the periods relevant to the conduct described herein, Barclays' LIBOR submissions for U.S. Dollar, Yen, and Sterling and Euribor submissions were false, misleading or knowingly inaccurate because they were routinely based on impermissible factors ...*"

5.10 (page 27) "*... Barclays' traders and submitters each specifically intended to affect the price at which the daily BBA LIBOR for U.S. Dollar, Sterling, and Yen (for particular tenors), and the EBF Euribor (for particular tenors), would be fixed ...*"

5.11 (page 28) "*Barclays Bank and Barclays Capital are liable for the acts, omissions and failures of the traders, managers, and submitters who acted as their employees and/or agents in the conduct described above ...*"

6. The identity of the managers at Barclays referred to in the above extracts from the CFTC Order will be specified when Barclays discloses those details.

House of Commons Treasury Committee ("HoCTC")

7. In a report entitled "Fixing LIBOR: some preliminary findings" (HC 481), the HoCTC published a preliminary report on the outcome of its inquiry into LIBOR manipulation and Barclays' involvement in it. In the report the HoCTC referred to extensive evidence given to it by individuals employed by Barclays at the Material Times. The report included the following statements.

7.1 (paragraph 34) "*The actions that have so far been discovered of Barclays and other traders were disgraceful ... This attempted manipulation of LIBOR should not be dismissed as being only the behaviour of a small group of rogue traders. There was something deeply wrong with the culture of Barclays. Such behaviour would only be possible if the management of the bank turned a blind eye to the culture of the trading floor. The incentives and control systems of Barclays were so defective that they incentivised traders to benefit their own book irrespective of the impact on shareholders and the bank's overall performance.*"

7.2 (paragraph 38) "*The attempted manipulation of Barclays' LIBOR submissions with the intention of personal gain continued for four years. It is shocking that it flourished for so long... Nor was there any pressure from senior executives within Barclays to ensure that effective LIBOR controls were in place ... These are serious failures of governance within Barclays, for which the board is responsible.*"

7.3 (paragraph 43) "*September 2007 marked the start of a second phase of LIBOR manipulation by Barclays. In this phase, Barclays attempted to manipulate its LIBOR submissions to prevent it being singled out when compared to other banks in the LIBOR panel. The FSA's Final Notice stated that Senior management's concerns in turn resulted in instructions being given by less senior managers to Barclays' Submitters to reduce LIBOR submissions in order to avoid further negative media comment.' Mr Diamond confirmed that these senior management were from Barclays Group Treasury.*"

7.4 (paragraph 105) "*Barclays did not need a nod, a wink or any signal from the Bank of England to lower artificially their LIBOR submissions. The bank was already well practised in doing this ...*"

7.5 (paragraph 112) "*The culture of Barclays allowed people to do the wrong thing quite openly over a long period, with the attempted manipulation being shouted across the dealing room floor.*"

European Commission

8. On 4 December 2013 a press release of the European Commission announced that Barclays and 3 other banks had been found to have participated in an illegal cartel between September 2005 and May 2008 involving its traders discussing with other banks their submissions for the calculation of EURIBOR as well as their trading and pricing strategies.

Subsequent publicised admissions

9. In the course of hearings in open court in proceedings brought in the High Court of Justice, Queen's Bench Division, Commercial Court (Claim No 2012 Folio 1259) by Graiseley Properties Ltd and others against Barclays, the following facts were made public.

   9.1 On Friday 31 August 2007 Mr Jerry Del Missier (former Chief Operating Officer of Barclays) sent an email to Mr Bob Diamond (then Chief Executive Officer of Barclays Capital and a member of Barclays' board of directors) and to Mr Rich Ricci (former Head of Investment Banking at Barclays Capital and a member of its Executive Committee) in which it was sated "*The whole LIBOR curve is rubbish. The real story is that these are all fantasy rates*".

   9.2 Barclays pleaded an admission that "*on at least a few occasions between approximately September 2007 and at least approximately May 2009, Barclays made improperly low LIBOR submissions for yen and sterling LIBOR in response to concerns of inaccurate speculation relating to Barclays' high LIBOR submissions compared to other contributor banks and a belief within Barclays that other contributor banks were making unrealistically low LIBOR submissions.*"

   9.3 In a telephone conversation on about 30 November 2007 Miles Storey (then a manager in Barclays' Treasury Department) informed Mark Dearlove (then managing director of Barclays Capital) that guidance from the "31st Floor" (being a reference to the location of the meeting room of Barclays' board of directors) was that Barclays should not stick its head above the parapet in terms of its LIBOR submissions.

9.4 For at least a significant time during the Material Period (particulars of which will be provided following disclosure) but in particular between 2007 and 2009 Barclays operated its own off-shore tax exempt global interest rate portfolio called the Ricardo Master Fund ("**RMF**") which profited from LIBOR rate manipulation as pleaded in paragraphs 111 to 135 of the Particulars of Claim.