

AC-2024-LON-001124



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**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

**BEFORE THE HONOURABLE MR JUSTICE KERR**

**BETWEEN:**

<b>THE KING</b>	
<b>-on the application of-</b>	
<b>CLYDESDALE FINANCIAL SERVICES LIMITED</b>	<b><u>Claimant</u></b>
<b>-and-</b>	
<b>FINANCIAL OMBUDSMAN SERVICE LIMITED</b>	<b><u>Defendant</u></b>
<b>-and-</b>	
<b>(1) ARNOLD CLARK AUTOMOBILES LIMITED</b>	
<b>(2) JENNA LEWIS</b>	<b><u>Interested</u></b>
<b>(3) FINANCIAL CONDUCT AUTHORITY</b>	<b><u>Parties</u></b>

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**APPROVED ORDER**

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**UPON** the Claimant's application for permission to apply for judicial review dated 4 April 2024

**AND UPON** the Order of the Hon Mrs Justice Foster dated 22 July 2024, paragraph 1 thereof providing that the application for permission to apply for judicial review was adjourned to be listed in court as a "rolled-up hearing" (the "**Hearing**")

**AND UPON** the First Interested Party's applications for permission to rely on (1) additional judicial review grounds and (2) expert evidence, made by way of its Detailed Grounds dated 27 August 2024

**AND UPON** the Hearing being listed to be heard at 10.30 am on 15–17 October 2024

**AND UPON** hearing Ben Jaffey KC, Ruth Bala and Marlena Valles for the Claimant, James Strachan KC and David Hopkins for the Defendant, Jonathan Kirk KC and Richard Roberts

for the First Interested Party, and Jemima Stratford KC and Aarushi Sahore for the Third Interested Party

**AND UPON** the Second Interested Party neither being present nor represented but the court being satisfied she had chosen not to take part in the proceedings

**AND UPON** the court handing down its reserved judgment remotely on 17 December 2024

**IT IS ORDERED THAT:**

- 1 The First Interested Party's applications for permission to advance a ground of challenge alleging procedural unfairness and for permission to rely upon the report of Frontier Economics are refused.
- 2 The First Interested Party is permitted pursuant to paragraph 2 of the order of the Hon Mrs Justice Foster dated 22 July 2024 to put forward its arguments in support of the Claimant's second ground of challenge.
- 3 The Claimant is granted permission to claim judicial review on its three grounds of challenge.
- 4 The claim for judicial review is dismissed on all three grounds.
- 5 The First Interested Party shall pay the Defendant's costs of and associated with responding to the First Interested Party's applications relating to its challenge alleging procedural unfairness and to rely upon the report of Frontier Economics on the standard basis, to be subject to detailed assessment if not agreed.
- 6 The Claimant shall pay all the other costs of the Defendant on the standard basis, to be subject to detailed assessment if not agreed.
- 7 The First Interested Party shall pay £20,606.38 to the Defendant within 21 days by way of payment on account of the costs to be paid under paragraph 5 above.
- 8 The Claimant shall pay £116,769.46 to the Defendant within 14 days by way of payment on account of the costs to be paid under paragraph 6 above.

9 The Claimant is granted permission to appeal to the Court of Appeal.

**Dated: 24 December 2024**

**Further observations:**

Costs

- (1) The appropriate costs orders are agreed, save that there is a disagreement about the amount that should be paid on account by, respectively, Clydesdale and Arnold Clark. The latter has also questioned the proportion of the FOS's costs which it should bear. I have considered the written submissions of those three parties on this topic.
- (2) I do not think the overall amount of costs claimed by the FOS - £196,251.20 including non-reclaimable VAT - is likely to be found excessive on a detailed assessment. The rates and time spent do not appear unreasonable for litigation on this scale. However, individual items could well be trimmed down or disallowed on a detailed assessment.
- (3) I am prepared to accept the FOS's suggestion of a prima facie 85:15 split as between Clydesdale and Arnold Clark, though this is not set in stone and, as I understand it, could be altered on a detailed assessment. The question then becomes, what is the appropriate percentage reduction to allow for a margin of error.
- (4) I think the FOS's suggested reduction of only 15 per cent is not enough; the reduction should be 30 per cent. I therefore order Clydesdale to pay 70 per cent of 85 per cent of the full amount claimed; and Arnold Clark to pay 70 per cent of 15 per cent of the full amount claimed; hence the figures at paragraphs 7 and 8 of the order, if my arithmetic is correct.

Permission to appeal

- (5) I find the merits of the proposed appeal weak. Clydesdale would struggle to persuade me that the outcome of the litigation has a real prospect of success in the sense of the outcome being substantively altered on appeal in Clydesdale's favour. However, the Court of Appeal quite often upholds decisions at first instance on the basis of different reasoning.
- (6) That seems to me more realistic here than the dim prospect of an outright reversal of my decision. If the decision were upheld on different or partially different grounds, the Court of Appeal's reasoning could impact significantly on the outcome of other cases. I am willing to accept that as a compelling reason why an appeal should be heard.
- (7) I will therefore grant permission to appeal, without much enthusiasm. I note the FCA's concern about delay; but if I refuse permission, the Court of Appeal would probably grant it and that would build in more delay. The parties may well have a reasonable case for seeking expedition, a matter I leave to the Court of Appeal.
- (8) For completeness, I do not see any obvious relevance in the fact that permission to appeal to the Supreme Court has been granted in the *Johnson* case. I would not find that alone to

be a compelling reason for an appeal to be heard in this judicial review. The private law remedies at issue in *Johnson* are different and there is not much, if any, cross-over.

*Breaches of the embargo*

- (9) I have carefully considered the very full report, explanation and apologies in the witness statement of Mr Vaughan Williams and the points made in the FCA's written submissions dated 20 December 2024. Under CPR rule 81.6, I have had to consider whether the court on its own initiative should proceed against the FCA in contempt proceedings.
- (10) I have concluded that no further action should be taken. The breaches were careless, not malicious; no adverse consequences flowed apart from the disruption to the FCA's work through having to report them and explain how they occurred; and that was done promptly, fully, frankly and in a spirit of contrition. Further retribution is not needed.