

ENGLAND AND WALES / JUDGMENT

Sainsbury's Bank Plc, Re

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Neutral Citation Number: [2025] EWHC 1062 (Ch) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES COMPANIES COURT (ChD Case No: CR-2025-000088 Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: 1/05/2025 Before : MR JUSTICE HILDYARD

- ----- IN THE MATTER OF SAINSBURY'S BANK PLC
- and – IN THE MATTER OF NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY
- and – IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000
- -----
- ----- Martin Moore KC (instructed by Linklaters LLP and Allen Overy Shearman LLP) for the Claimants Hearing dates: 15, 16 April 2025
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 1 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. MR JUSTICE HILDYARD Approved
Judgment Mr Justice Hildyard:

Introduction

Sainsbury's Bank Plc 1. 2. 3. 4. 5. By Part 8 Claim Form issued on 17th January 2025 Sainsbury's Bank plc ("Sainsbury's Bank") and National Westminster Bank Public Limited Company ("NatWest") (Sainsbury's Bank and NatWest together, "the Parties") seek: (1) an order under S.111 (1) of the Financial Services and Markets Act 2000 ("FSMA") sanctioning a banking business transfer scheme ("the Scheme") which effects the transfer of substantially all of the banking business of Sainsbury's Bank ("the Transferring Business") to NatWest; and (2) ancillary orders under S.112 of FSMA. Sainsbury's Bank is the banking subsidiary of the well-known supermarket group, J Sainsbury plc ("Sainsbury's"). It provides a range of financial services and products, primarily credit cards, personal loans and savings accounts to personal customers, the vast majority of whom are located in the United Kingdom. It operates using the trading name of Sainsbury's Bank. NatWest is well-known. It is what used to be known as a high street bank. More specifically, it is the ring-fenced UK bank within the wider NatWest group, formerly known as the Royal Bank of Scotland group. It is not permitted to have a direct funding relationship with the investment bank within the NatWest group. As at 31st December 2024, NatWest had total assets of £421.88bn and shareholders' equity of £21.61bn. As at that date, it had customer deposits in

excess of £276bn and loans and advances to customers in excess of £297.6bn. It has in excess of 19 million customers. The transfer will not prevent NatWest from continuing as a “ring-fenced” body within the meaning of Part 9B of FSMA. The business to be transferred consists of credit cards, personal loans and savings accounts. There will be no material changes to the terms and conditions of the customer products as part of the Scheme itself; but in the latter half of 2025 the business will migrate onto NatWest’s systems which will require certain changes to certain products, which will be achieved through the exercise of the existing power in the customers’ contracts to amend their terms and conditions. The Application has been presented by Mr Martin Moore KC, instructed by Linklaters LLP (for Sainsbury’s Bank) and Allen Overy Shearman Sterling LLP (for NatWest). As is not unusual in these cases, the files supporting the Application are voluminous. I have read the parts of those files identified by Mr Moore as pre-reading (time permitting), including the summary of the various objections to the transfer provided. The matter is set out clearly and helpfully in Mr Moore’s skeleton argument. I acknowledge with gratitude that much of what follows is derived from that document, as amplified by Mr Moore’s careful and clear oral submissions. I would also wish to recognise the efforts of all those involved in the logistical and administrative planning and arrangements which lie behind a scheme such as this. MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc Background and genesis of the Application 6. 7. 8. 9. 10. 11. The proposed transfer is the culmination of a strategic review of Sainsbury’s business and the decision that Sainsbury’s should focus its efforts more on its retail business, and that to that end, it should dispose of its banking operations as non-core to its principal activities. Following a competitive sales process NatWest emerged as the successful bidder and accordingly on 20th June 2024, Sainsbury’s Bank and NatWest entered into a business sale agreement (the “BSA”) for the sale of the Transferring Business (as defined in the Scheme). Under the terms of the BSA, the gross customer assets and liabilities and associated cash at completion will transfer to NatWest and an agreed £125m will be payable from Sainsbury’s Bank to NatWest (which represents an agreed discount to the balances of the assets and liabilities being transferred). Actual gross customer assets, balances and accounts to be acquired may vary at completion with consequential adjustments to the consideration. As at 31st October 2024, the gross asset value of the Transferring Business was £3bn and the value of the financial liabilities amounted to £3.5bn. The Transferring Business comprised approximately 1,381,004 customers of whom: (1) (2) (3) approximately 268,081 held a retail deposit account (representing 100% of the financial liabilities); approximately 854,110 held a credit card (representing 36.53% of the gross asset value); and approximately 258,813 had a personal loan (representing 63.47% of the gross asset value). By 30th April 2025, the gross assets are expected to have declined to £2.4bn and the financial liabilities to £2.8bn. These changes are due to Sainsbury’s Bank ceasing to originate new personal loans and credit card accounts to new customers from July and August 2024 respectively and not actively seeking deposits from new customers on competitive rates and ceasing to originate new deposit accounts from 12 th March 2025. Not all the business conducted by Sainsbury’s Bank, and thus not all deposit accounts, credit card agreements and personal loans, will transfer. Certain narrow categories will not be transferred and the rationale for their exclusion are set out in §§4.4 & 4.5 of the first witness statement of Mr Michael Larkin (“Larkin 1”, made on behalf of Sainsbury’s Bank as its Chief Financial Officer). However, a very substantial

great majority consisting of credit card, personal loans and savings accounts will transfer. 12. There will be no material changes to the terms and conditions of the customer products as part of the Scheme itself. MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc 13. 14. There are approximately 359 employees assessed to be in scope to transfer to NatWest. No employees will be transferred pursuant to the Scheme. Certain of them will be offered enhanced severance packages, and there may have to be some redundancies. The rest will move to NatWest pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006. More details are given in Mr Michael Larkin's second witness statement ("Larkin 2") §10.1. At the conclusion of the process rather than entering into a solvent wind down as was the intention described in §§3.2 & 9.7.4 of Larkin 1 it is now proposed that Sainsbury's Bank will cancel its deposit taking permission, subject to regulatory oversight and approval (including in respect of the treatment of any Excluded Deposits (as defined in the Scheme)), but the legal entity will remain, albeit without using the word "Bank" in its name, as the vehicle to deliver any future financial services offering by the wider Sainsbury's Group (see Larkin 2 at §11). Regulatory solvency metrics 15. 16. 17. The primary focus of the Court in the context of these schemes is to ensure that the proposed scheme of transfer would not have any material adverse effect on customers or other stakeholders. That is not, of course, the Court's only concern; and I shall consider later in more depth the jurisdiction of the Court and the nature of the decision now to be made. But in terms of this principal concern, I note that as appears from Larkin 1 (at §§4.17-4.18) that the credit ratings of NatWest are better than those of Sainsbury's Bank. As appears from the second witness statement of Ms Angela Byrne made on behalf of NatWest as its Interim CEO of Retail Banking and its Managing Director, Customer Propositions and Journey of Retail Banking ("Byrne 2") 2 at §8(d), NatWest's regulatory solvency metrics are in excess of the regulatory minima and the Scheme will not materially affect these. These factors together suggest clearly that transferring customers need have no concerns about the security of their deposits. I also record that the Prudential Regulation Authority ("PRA") and the Financial Conduct Authority ("FCA"), having considered the Scheme in the context of their statutory duties, and indeed been involved in the iterative process required to develop it and all its ancillary arrangements, have each written to the Parties to confirm that they will not be exercising their statutory rights to appear at the hearing. 18. In addition the PRA has provided, and I have been shown, the necessary certificate of adequate financial resources. Particular features of the arrangements envisaged or provided for by the Scheme 19. 20. I turn next to outline particular features of the Scheme which address other matters concerning the mode, sequence and effects on customers interests which the Court is also required to consider. I start with issues relating to service standards and product terms: or in other words, how Sainsbury's Bank customers' existing relationship with Sainsbury's Bank is to be MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc 21. 22. 23. 24. 25. replicated or reflected in their proposed new relationships with NatWest. The change will be in two stages. A two-stage migration of business is necessary because NatWest does not at present have the functionality in its systems to migrate to its platforms the Transferring Business. More time is required. Accordingly, with effect from the Effective Date (1 May 2025) NatWest and Sainsbury's Bank have entered into a transitional services agreement ("TSA") pursuant to which Sainsbury's Bank will continue to administer and

service the relevant products to the same standards as applied in the 12 months period prior to 20th June 2024, until such time as they can be migrated to the systems of NatWest. As a result, from the Effective Date, NatWest will have available to it the technology and capability to continue to manage the Sainsbury's Bank products in substantially the same way as Sainsbury's Bank has done so prior to the transfer. This means that there is no need for there to be any immediate changes to Sainsbury's Bank customer terms and conditions (beyond those necessary to give effect to the change of obligor as more specifically adumbrated in Clause 12 of the Scheme) or the ways that Sainsbury's Bank customers interact with NatWest following the transfer, bearing in mind that some of the personnel will be undertaking similar roles as prior to the transfer on NatWest's behalf under the TSA. There should, therefore, be no loss of functionality to online banking services or access to account information. It is intended that the second stage, when the business will migrate onto NatWest's systems, will take place in the latter half of 2025. As Ms Byrne has explained in Byrne 2 at §10, NatWest's migration planning is advanced; but the logistical complexities are considerable and it is not intended that there be a single migration date. The current expectation is that migration will happen over three migration events between October 2025 and November 2025¹ as and when NatWest is operationally ready to receive the product on to its systems. It is clear that NatWest has given considerable thought to the process and consequences of migration and has identified changes which it considers to be necessary. It has been guided by the principles set out in §40 of the first witness statement made by Ms Byrne ("Byrne 1") which briefly are that: (1) (2) (3) (4) new terms will not detract from the main product features, except where not practical due to operational or technical constraints, changes will, where possible, be beneficial to customers, where detriment has been identified reasonable mitigations will be put in place, which may include compensation where it is thought appropriate, all changes will comply with NatWest's regulatory obligations, including specifically the FCA's Consumer Duty which requires the delivery of good outcomes to retail customers, 1 Likely to be October 2025 for Credit Cards and November 2025 for deposits and personal loans. MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc (5) (6) 60 days' notice at least will be given to customers both of the fact and the detail of any changes to their terms and conditions. Customers will also be given prior notice of any temporary issues attendant upon the switch over, and, customers will be reminded, if they do not wish to transfer to NatWest's systems on the terms proposed, they may transfer their accounts, repay any outstanding balances and close down their accounts. Customers with deposits and credit cards are entitled to close down their accounts without incurring any penalty, fee or charge, but customers with a loan who decide to repay their loan in full early between the Effective Date and the relevant migration date because they do not wish to migrate will incur a fee, as provided for in their existing loan terms and conditions unless a customer notifies Sainsbury's Bank and/or NatWest via telephony or secure messaging that they have decided to repay their loan in full early between the Effective Date and the relevant migration date because they do not wish to transfer to NatWest. In such cases, any fee charged under their existing loans terms and conditions in respect of early settlement will be refunded.

26. Migration to NatWest systems will require certain changes to certain products, which will be achieved, not by or pursuant to orders made under the Scheme, but rather through the exercise of existing power in the customers' contracts to amend their terms and conditions. Contractual changes pursuant to Notices of Variation 27. The notices of variation ("NoVs") necessary to effect the migration derive their legal force from existing contractual provisions in the relevant customers' contracts and not from any provision of the Scheme. In theory, such changes as NatWest may propose could have been proposed by Sainsbury's Bank. Thus, no customer has a legal right or expectation that their terms and conditions will remain immutable in perpetuity and is already exposed to changes, provided such changes are within the terms of the contract, properly governed and compliant with their counterparty's regulatory obligations. 28. Nevertheless, although to be implemented contractually, these changes are only required by dint of the scheme; and Mr Moore readily acknowledged that the Court cannot close its eyes to the consequences.
29. Ms Byrne's evidence, which I have read, goes into considerable detail as to the likely changes and their consequences for certain cohorts and the communications have also made this impact clear. 30. However, in so far as the proposed NoVs could be regarded as an effect of the Scheme itself the mitigation to that impact lies in the governance, regulatory background and principles by which NatWest will be guided and as set out above, rather than the granular detail of any change and its possible mitigant, not least because such NoVs are not completely finalised. Nevertheless, I appreciate the lengths that NatWest has gone to in minimising disruption on any switch over and mitigating any adverse effects of the NoV. MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc 31. I need outline these only briefly, as follows: (1) (2) (3) The currently proposed changes to the terms and conditions relating to credit cards are set out in Byrne 1 §41(a) and relate to fees and interest on travel money purchases, balance transfers between credit card accounts, and the methods of repaying credit card balances. The changes, which customers were informed of in the communications programme, are relatively minor. The currently proposed changes to the terms and conditions relating to personal loans are set out in Byrne 1 at §41(b) and, amongst other changes, relate to changes in the manner of accounting for interest to ensure that loans to customers who pay in accordance with the repayment schedule amortise to zero and to changes to the calculation of arrears interest for those customers who do not pay in accordance with the repayment schedule and which may result in relatively small amounts in extra interest being payable. Again, the communications sent to customers included information in relation to these changes. These amounts are relatively small, NatWest will consider remediation (probably monetary compensation) on a case by case basis. The changes to deposit terms were set out in Byrne 1 at §41(c) but have been adapted as set out in Byrne 2 at §§13-14, which differs slightly from what customers were informed of as part of the communication programme. It is the case that interest rates available from NatWest will be the same or better. It, however, remains the case that certain fixed term products customers who currently are able to pay away accrued interest on a monthly basis to other bank accounts (including with third party banks), will lose that functionality. This

may affect 2,887 customers. If and to the extent that impact cannot be mitigated in any other way, by for example transferring to another provider at the same interest rate, NatWest will consider remediation (probably monetary compensation) on a case by case basis. 32. Other necessary changes or modifications to enable the satisfactory transfer/migration of the business to be transferred can be summarised under various subject headings as follows.

Marketing Preferences 33. In relation to marketing preferences, the Scheme provides that where a transferring customer has provided marketing preferences to Sainsbury's Bank, these marketing preferences shall apply as between the transferring customer and NatWest in respect of the Transferring Business such that, where the transferring customer has previously given permission to Sainsbury's Bank to market its products to the transferring customer, such permission will permit NatWest to market to transferring customers, save in relation to certain Nectar Cards. If a customer has already given a marketing preference to NatWest that will prevail, whether or not it differs from the marketing preference notified to Sainsbury's Bank. Bank of England Collateral MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc 34. Historically Sainsbury's Bank has transferred certain assets to the Bank of England as collateral in respect of the funding from the Bank of England as part of its liquidity management activities. In fact, Mr Moore KC informed me at as at today's date there is no such collateral; and it is only in case there were to be at the date the Scheme takes effect, that the Scheme contains provisions to ensure that collateral, when released, is transferred to NatWest.

Sanctioned Customers 35. 36. A recent area of focus for the Regulators on Part VII transfers has been the possible impact of sanctions and other asset freezes, whether as a result of the Russia /Ukraine conflict or more generally. In fact, Mr Moore confirmed to me that Sainsbury's Bank has no such customers; but again just in case, the Scheme provides that a deposit closed due to sanctions is an Excluded Deposit.

Overlapping Customers 37. 38. Sainsbury's Bank undertook an assessment of the likely impact of the Scheme and those who might be adversely affected by its terms, the results of which are discussed below, and have influenced the design of the Scheme. As is usual, the principal cohort at risk of detriment were customers who held products with both Sainsbury's Bank and NatWest, so-called overlapping customers. These related to (1) certain rights that banks customarily have and which might put the bank in a better position viz a viz the customer than it would be in had the transfer not occurred ("enlarged rights") and (2) a diminution in protection under the Financial Services Compensation Scheme ("FSCS Protection").

Neutralisation of "Enlarged rights" 39. 40. Examples include rights in relation to set-off, cross default clauses, "all monies" contractual obligations, consolidation rights and certain guarantee and indemnities which the Scheme would, absent provision to the contrary, in effect give to NatWest. In Alliance & Leicester PLC and Santander UK PLC, Henderson J (as he then was) referred to these provisions compositely as "neutralisation of enlarged rights" (see [17]) and they have become a very common feature of banking business transfers, and indeed an invariable one where the transfer is between two existing banks. The guiding principle is, as Henderson J went on to explain (also at [17], that the scheme should not give or be the occasion enabling the transferee (here, NatWest) to enjoy rights in respect of either of the parties which did not exist before the transfer 41. The "neutralisation

of enlarged rights” is carefully addressed in Mr Larkin’s first witness statement, as are the proposed mitigants which have been put in place: these are conventional, and, I am satisfied, appropriate in this case. FSCS Protection MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc 42. Another significant matter addressed in the Scheme is what is to be done to ensure that customers who currently have deposits at both Banks are not deprived of any part of their FSCS Protection.

43. Mr Larkin has explained that (see Larkin 1 at §6.12.3) as at 30th October 2024, there were 7,911 customers who would exceed the £85,000 FSCS protection limit, when considering the combined balances held across both NatWest2 and Sainsbury’s Bank. 44. In summary, and as again is conventional, the Scheme provides that for a period of three months starting one month prior to the transfer of their account under the Scheme, a customer (including one with an account, such as a fixed rate savings account, which may have restrictions on withdrawals) will be permitted to withdraw from either such customer’s transferred account(s) or existing NatWest account(s), or a combination of both, or transfer to another institution, in each case free from penalty, fee, notice or charge (including loss of interest). Switch-Over 45. Inevitably as a practical matter, the actual process of switch-over may result in some loss of functionality. These are detailed in Byrne 1 at §§42-52 and updated in Byrne 2 at §§15-20. As Mr Moore put it, they are all relatively short-lived inconveniences. 46. The over-arching approach that NatWest has adopted has been that: (1) Customers are notified of the switch over relevant to their product well in advance and those communications will: (a) (b) (c) (d) set out key information and details regarding the switch-over relevant to them, advise customers to undertake any account activities in advance of the switch-over, explain what services will be available or unavailable during the switch- over period, and explain the ways in which post switch-over functionality may be reduced and any steps they need to take to restore full functionality and servicing after switch-over. Sainsbury’s Bank and NatWest will make basic account data available via their customer services teams if a customer wishes to check a balance at the point prior to commencement of their switch-over period. Any alleged financial detriment suffered as a result of the switch over period will be assessed and compensated for on a case by case basis. (2) (3) 2 This includes Ulster Bank, Northern Ireland, which is part of NatWest but a separate brand. MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc 47. NatWest intends to communicate with customers informing them of the expected changes at the switch-over. NatWest intends to communicate with customers closer to the switch-over with the information described earlier. THE ARCHITECTURE OF THE SCHEME DOCUMENT 48. 49. 50. 51. 52. 53. Turning to the Scheme document itself, which has been worked on for many months by the Parties and their legal teams, in an iterative process also involving the Regulators, I need only provide what Mr Moore described as a “tour d’horizon”. Part A and Part B, which, by reference to Schedule 1 are the interpretation and introductory sections, are largely self-explanatory. They do the job of identifying the assets, liabilities and business to be transferred to NatWest. The definitions cater for: (1) (2) (3) The conventional concept of Residual Assets, Residual Liabilities and Subsequent Transfer Dates is adopted to allow for any timing issues

that may arise on transfer. This is precautionary as the Parties do not expect to need to use them. The similar concept of Restricted Assets, Restricted Liabilities and Subsequent Transfer Dates. The definition of Excluded Business, Excluded Liabilities and Excluded Assets, from which the Court will see that certain credit cards, deposits, personal loans and certain historical liabilities will not transfer. Part C, Clauses 3-11 deal with the transfer of the business, assets and liabilities and certain conventional consequential matters. Part D, Clauses 12-21 contain further consequential provisions. Clause 12 contains conventional provisions to ensure continuity of references and other matters to take account of the change of obligor, but, importantly, do not change the terms and conditions of any agreements beyond that. Clause 13 deals with continuity of proceedings, Clause 15 deals with the FSCS position. Clause 18 deals with data protection and marketing preferences. Part E, Clauses 22-30 deal with the “switching off” of the enlarged rights that may be attendant upon the transfer of the banking business of Sainsbury’s Bank to NatWest. Part F, Clauses 31-34 deal with a miscellany of matters, including the Effective Date, modifications, and governing law. The Effective Date is proposed to be 00:00:01 London on Thursday 1st May 2025.

Jurisdiction and Approach of the Court 54. I turn to consider the source and nature of the jurisdiction of the Court, and its approach to its exercise. MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc 55. The Court’s jurisdiction derives from s.106 of FSMA. It is a pre-requisite of any Order that any requirement prescribed by the Regulations has been complied with (s.108(2)), that the appropriate certificates have been obtained (s.111(2)(a)) and that the transferee is authorised to carry on the business to be transferred or will be so authorised prior to the Scheme becoming effective (s.111(2)(b)).³ 56. In this case, in my judgment, Section 106 is satisfied in that the conditions in s.106(1) are satisfied.

(1) Section 106(1)(a) refers to sub-section 2 which requires (in paragraph (a)) that the whole or part of the business carried on by a UK authorised person, namely Sainsbury’s Bank, is to be transferred to another body who will carry it on in the United Kingdom, namely NatWest. (2) Section 106(1)(b) requires that the whole or part of the business to be transferred includes the acceptance of deposits. Clearly, it does so. (3) The Scheme is not an excluded scheme. 57. 58. S.107 of FSMA sets out the circumstances in which an application may be made to the Court. S.107(2) of FSMA permits the application to be made by either, or both of the authorised persons concerned. In this case, it is made by both. As both Sainsbury’s Bank and NatWest have their registered office in England, the application must be made in England to the High Court. S.108 confers upon the Treasury power to impose requirements on applicants making a S.107 application for the sanction of a scheme. Pursuant to that rule-making power, the Treasury has introduced the Transfer Regulations. In particular: (1) Regulation 5(2) requires the publication of a notice that the application has been made in:- (a) (b) Each of the London, Edinburgh and Belfast Gazettes; and Two national newspapers in the United Kingdom. (2) (3) Regulation 5(3) requires the notice to be in a form approved by the PRA and that it contains the address from which the statement setting out the terms of the Scheme can be obtained. Regulation 6(1)(b) provides that no order can be made by the Court until a period of not less than twenty one days has elapsed since the PRA and FCA were given the requisite documents. 59. I am satisfied that these requirements have been

satisfied, except possibly as regards Regulation 6(1)(b). There is a wrinkle in this regard, arising from the fact that, although an unstamped version of the application was sent to the PRA and the FCA on 22 January 2025, and they have been aware of the application for many months, in 3 The jurisdictional requirements are summarised at paras. 27 to 33 of Re Alliance & Leicester plc [2010] EWHC 2858 (Ch) (supra). MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc 60. 61. 62. 63. 64. the event the stamped copy of the relevant application was not sent out until 25 March 2025, one day short of the 21 clear days specified. The question is, therefore, whether the reference to “application” is necessarily to a stamped application. In the event, Mr Moore suggested to me an easy way of finessing the point, being to defer any determination until 16 April; and I readily accepted and adopted that course as matter of convenience and caution. However, my research after the event has persuaded me that this was not strictly necessary because (as it seems to me from my own (and therefore untested) research that an unstamped application suffices provided, of course, that it is issued through the court and authentic, and that it is served in time. The Regulations do not define the term; but it is of note that the CPR would not require sealing: see CPR 2.6. Accordingly, I think the better view, which is that the reference to “application” in the Regulations is not intended to be confined to stamped application; but, as I say, the point has not had to be tested because of the easy solution available. Unlike in insurance business transfers, there is no requirement to communicate directly with the customers of either the transferor or transferee. The policy behind such a distinction is not hard to see. An insurer and its policyholders are often bound into very long-term contracts of great personal significance to the policyholder whereas the relationship between a banker and a depositor or borrower is, at root, more transactional and is capable of being, although often is not, much more transient. Sainsbury's Bank has in fact gone considerably further than was required by the Regulations. The additional steps taken to notify clients and other interested parties of the Scheme and the Court process are set out in in the evidence filed in support. As regards Sainsbury's Bank the communication programme is set out in detail in §9 of Larkin 1. Broadly, transferring customers of Sainsbury's Bank were contacted by post and transferring customers who typically receive email communications were also sent an email, and directed to a dedicated section of Sainsbury's Bank's website where scheme specific documentation could be accessed. This is outlined in §§9.4.3-9.4.4 of Larkin 1. Again, as is conventional in transfers of any scale an appropriately staffed dedicated help line was established by Sainsbury's Bank to field matters raised by customers in response to the communications programme. This is outlined in §9.4.5 of Larkin 1. As explained in Byrne 1 at §14, in light of NatWest's very much greater scale and the very minor impact it has on NatWest's solvency metrics, NatWest undertook no direct communication with its 19 million or so customers, but it signposted on its website the Scheme specific section of Sainsbury's Bank's website. 65. These matters were canvassed at the first hearing of the Part 8 Claim Form before Deputy ICC Judge Frith on 22nd January 2025. By the Order he made, directions were given as to advertising. MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc Advertisement and notification of customers and third parties 66. 67. 68. 69. As required, the PRA approved the form of the notice on 16th January 2025. In this

case, the notices required by the order were published on 24 th January 2025 in the Telegraph and Daily Mail and in the Gazettes on 24th January 2025 (Larkin 2 at §§2.3- 2.4). The taking of the proposed and required steps is described in detail in Larkin 2 at §§3-

7. I note that the communication programme involved attempted contact with 1.2m customers. It would be extraordinary if such a large-scale exercise passed without any hitches and, in this case, there were a small number of incidents which (with the remediation provided) are described in Larkin 2 at §3.11. The dedicated telephone helpline was maintained by Sainsbury's Bank from 23 rd January 2025 and will remain open until 30th April 2025 (see Larkin 2 at §9). I am satisfied that the customers of Sainsbury's Bank and other affected parties were properly and reasonably informed about the Scheme, consistently with their communication needs, and where errors occurred they were expeditiously and appropriately remediated. Availability of documents 70. The necessary documents were made available from the address specified in the advertisement and on the web pages. The Sainsbury's Bank Scheme specific webpage was live from 23rd January 2025. Necessary authorizations 71. 72. Under S.111(2)(b) the Court must be satisfied that NatWest has the necessary authorisation to carry on the business transferred to it. This is confirmed by Byrne 1 at §27 and also by Byrne 2 at §7. In accordance with paragraphs 5(5) and 6(1)(b) of the Regulations, a copy of the application, albeit unstamped, and the statement setting out the terms of the Scheme were each given to the PRA and FCA on 22nd January 2025, a good deal more than twenty-one days prior to the date of the hearing (Larkin 2 at §2.6). Obviously, the PRA and the FCA have been aware of the proposal to seek sanction of the Scheme for many months. Further, a copy of the stamped application was also sent on 25 th March
2025. This was, in fact, only 20 clear days before the hearing date. This is the wrinkle I addressed earlier: I explained that I consider the better view to be that the application served in January sufficed for these particular purposes; but, in any event, my determination today is 21 days after the stamped version was provided. 73. Additionally, as required by the Regulators, Sainsbury's Bank has been providing to the Regulators on a regular basis a summary of all responses received by Sainsbury's Bank to the communications exercise. MR JUSTICE HILDYARD Approved Judgment Certificates Sainsbury's Bank Plc 74. Under S.111(2)(a) the Court must be satisfied that the appropriate certificates under Schedule 12 have been obtained. In this case that will be a certificate from the PRA confirming that NatWest will, taking the proposed transfer into account, possess the necessary margin of solvency. Appearances and objections 75. Section 110 of the Act permits various parties to be heard on the application for court approval to a banking business transfer scheme. The parties entitled to be heard are the PRA and the FCA and "any person (including an employee of the transferor concerned or of the transferee) who alleges that he would be adversely affected by the carrying out of the scheme." The Regulators 76. The Regulators, having considered the Scheme in the context of their statutory duties, each wrote to the Parties to confirm that they would not be exercising their statutory rights to appear at the hearing, although I was informed that an observer was in Court on behalf of the PRA. The customers 77. 78. 79. 80. The evidence (and in particular Mr Larkin's second Witness

Statement) discloses that, by 30th March 2025, the communications programme elicited 10,344 responses, the majority of which were BAU4 queries. 415 were categorised as objections and 40 as complaints. That is a very low rate of objection compared to the numbers of customers (0.033%). That fact does not, as David Richards J remarked in *Royal Sun Alliance Insurance PLC* [2008] EWHC 3436 (Ch), mean that the Court need not scrutinise the proposals fully. See also Henderson J in *Re Alliance & Leicester plc* (supra) at [36]. Immediately prior to the Hearing 6 customers had stated that they would attend the hearing and a further 4 indicated that they might do so. Full details of the hearing time, place and date were duly provided. In the event, none attended. It is however appropriate to address the concerns they and others have expressed.

81. Mr Moore described the objections. Many of the objections are of types raised in other cases and some of the objections have been of a type which has been the subject of judicial observations in any event. Some broad themes emerged, which are addressed below. It is worth noting that nobody raises any concerns regarding the security of their deposits, which is the primary concern on any banking business transfer. 4 Business as usual, no doubt prompted by the communications. MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc 82. In this case there is a valid distinction to be made between an effect on a customer which is a direct impact of the Scheme and an effect which is a direct impact of the NoV necessary to put the former Sainsbury's Bank customers onto NatWest's systems. Whilst the Parties accept that the Court must look at the Scheme and its ramifications as a whole they emphasised that, whilst the changes that NatWest have identified are likely to proceed, they are not inevitable in their current form. They will only be made if they are consistent with NatWest's regulatory obligations including in respect of the FCA's Consumer Duty, which requires NatWest to deliver good outcomes for retail customers. Further, the changes will only occur after there has been regulatory interaction on the changes themselves and any mitigants proposed to put in place. 83. The broad themes of objection to the Scheme put forward are: (1) (2) (3) Service Standards. Some customers are concerned about levels of service going forward and have had negative experiences with NatWest in the past. As to the first point there is no objective reason to think that service standards will decline and indeed, positive reason to suppose that they will not. There is a transitional services agreement for Sainsbury's Bank to provide its platform and other services for a period following transfer, and some of the services will be provided by the same personnel under the TSA. The process of migration to NatWest's platforms will be the subject of regulatory scrutiny to ensure that NatWest complies with, as it will, the Consumer Duty. As to the second point, it is inevitable that some individual customers of any large bank will have had what they regard as an unsatisfactory experience in their dealings with the bank. But there is no reason for supposing that there is a widespread or systemic issue with service levels at NatWest. FSCS It is recognized that overlapping customers may be adversely affected by a drop in the levels of FSCS cover as a result of having a deposit with one bank rather than two. This is acknowledged and the mitigation which has been put in place is sufficient and, in fact, standard practice in banking business transfer schemes. Unsurprisingly, this has

been an area of regulatory focus. Use of personal data This is not an uncommon concern. However, it is in substance a sub-set of concerns regarding service standards. There is no legal impediment to NatWest becoming the data controller. It is in fact absolutely essential in order for the Transferring Business to function in its new home. In fact, provision is made in the Scheme which restricts how NatWest can use personal data for marketing preferences. 84. The objections which relate to the NoV chiefly relate to concerns about the rates of interest which may be applied by NatWest, and the functionality of paying monthly interest to another account. As a result of the proposed NoV, customers have been informed that it is proposed that they will still receive the same interest rate on their savings accounts, and in some circumstances, may be paid more interest than they would have otherwise received with Sainsbury's Bank. Customers have also been MR JUSTICE HILDYARD Approved Judgment Sainsbury's Bank Plc informed that as a result of the NoV, it is not proposed that there will be any change to interest rates on credit card accounts or any 0% promotional offers that are in place. Likewise, save as a result of the changes to calculation of arrears interest (further described at paragraph 31(2) above), it is not proposed that there will be any change to the total amount that customers have left to repay on their loans. Customers will be given at least 60 days' notice of any proposed changes to interest rates in the future. 85. If a customer opposes any proposed change to interest rates or the proposed change at migration to their fixed rate deposit accounts (including the ability to automatically pay away interest), customers will be entitled to close their accounts and withdraw funds without any penalty, fee or notice requirements applying. If a customer wishes to close their account in these circumstances and believes that they may suffer financial detriment (for example, because they are unable to obtain another fixed rate term deposit product that matches the existing interest rate they receive), NatWest will review any complaints on a case by case basis and in line with their existing complaints process and offer monetary compensation where customer detriment is established. Ancillary and Miscellaneous matters 86. 87. 88. Section 112 (1) of FSMA confers upon the Court the power to make orders ancillary to an order under section 111 sanctioning a scheme. It followed the form of S.427 of the Companies Act 1985 and Para 5 (1) of Schedule 2C of the Insurance Companies Act 1982 until S.112 (2) which is wholly new. The cases on the width of S.112 have been given statutory recognition by virtue of the provisions of the new S.112 (2A) and the Court's powers have been further refined by S.112A. The width of the Court's powers under S.112(1)(d) and the overlap with the scheme are discussed by Lindsay J in *Re Norwich Union Linked Life Assurance Limited*

[2004] (supra) at paras 11 -12. The most recent decision on the ambit of s112 is *Re Barclays Bank Plc* [2018] EWHC 2868 (Ch). In this case, the Court is asked to use its powers under S.112(1) (d) to make orders with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out. In this case, those powers relate to conventional matters relating to continuity of references, premium and mandates and the like. It will also include, as is conventional, contracts which fall within the scope of S.122(2A) and s.112A. My determination and the

proposed form of Order 89. Having carefully considered the submissions (written and oral) and the documents supporting the Scheme, and having taken into account the objections (notwithstanding that ultimately no one appeared before me to put forward any orally), I am satisfied that in the circumstances of the case it is appropriate to sanction the Scheme, and (as I confirmed at today's hearing) I will do so. 90. A draft Order in the now conventional shortened form has been provided to me; and I shall instruct my clerk to seal it and return it today.

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