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Case No: CR-2023-005662
CR-2025-007806

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 15 July 2026

Before:

The Honourable Mr Justice Hildyard

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In the Matter of IBP Markets LTD (in Special Administration)

And in the Matter of the Investment Bank Special Administration Regulations 2011

Between:

(1) IBP Markets Ltd (in Special Administration)	**Claimants/ Applicants**
David Philip Soden and James Robert Bennett (in their capacity as Joint Special Administrators of IBP Markets Ltd)	
- and -	
All Blue Investments North Star 1 Limited (in Liquidation) (a company incorporated in the British Virgin Islands)	**Defendant/ Respondent**

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Adam Al-Attar KC and Paul Fradley (instructed by **Norton Rose Fulbright LLP**) for the **Claimants/Applicants**
William Day and Imogen Beltrami (instructed by **Freshfields LLP**) for the **Defendant/Respondent**

Hearing date: 25 June 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 15 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE HILDYARD

Mr Justice Hildyard :

Scope of this judgment

1. This judgment addresses the issues in dispute at the first contested directions hearing in these proceedings on 25th June 2026.

2. The principal issue to be determined is whether the parties should be given permission to rely at trial on expert evidence in relation to an analysis already undertaken by the Claimant of the pattern of trading between the parties (referred to as the "Trading Report"). The application for such permission is made by the Defendant/Respondent, All Blue Investments North Star 1 Limited (in liquidation) ("All Blue"). It is opposed by the Claimant, IBP Markets Ltd (in special administration) ("IBP") acting by its special administrators ("the JSAs").

3. There is also a secondary issue outstanding in relation to the process of disclosure which also requires determination.

4. All other matters that were on the agenda for the hearing have been agreed between the parties.

The proceedings in which these issues arise

5. IBP is authorised and regulated by the Financial Conduct Authority ("the FCA"). The principal activity of the firm was that of an investment bank, which operated as a wholesale broker, providing execution and custody services thereby facilitating access to equity, fixed income securities and other investments on the market. It acted as both agent and matched principal.

6. IBP agreed to voluntary requirements against its regulatory permissions on 25 May 2023 and subsequently, on 15 September 2023, the FCA imposed own-initiative requirements on the firm. As a result of these requirements, IBP entered special administration by order of Deputy ICC Judge Frith on 13 October 2023, and the JSAs were appointed as joint special administrators. The Claimant in CR-2025-007806 is IBP; the JSAs are the Applicants in CR-2023-005662.[1]

7. All Blue was (prior to its liquidation) an investment fund that carried on securities trading.

8. The underlying proceedings concern the basis on which certain assets and funds were transferred by All Blue to IBP in the course of their trading relationship prior to IBP's entry into special administration and/or the basis on which such assets and/or funds were (and still are) held by IBP.

9. All Blue's position is that the relevant assets/funds should have been, and were and are, held as "client monies" on statutory trust pursuant to the rules and subject to the protections set out in the FCA's Client Assets Sourcebook ("CASS"). Client monies are "*any money that a firm receives from or holds for, or on behalf of, a client in the course of, or in connection with, its MiFID business*". CASS 7.17.2R provides that a

[1] Where context requires, references to the JSAs in this judgment should be understood as being (also) to IBP, and vice versa.

firm receives and holds "client monies" as trustee on the terms of: (a) the client money rules and the client money distribution rules; and (b) the statutory trust set out CASS 7.17.2(2). See also CASS 7.17.5.

10. IBP's entry into special administration constituted a "*primary pooling event*" for the purposes of CASS 7A.2.2R. In those circumstances, CASS 7A provides for the client money pool held by IBP to be treated as a single notional pool for the beneficiaries of the client money pool and for the calculation of entitlements to participate in the distribution of that pool. A client's "*client money entitlement*" is calculated by reference to the total amount of money the firm was required to have segregated as client money in respect of that client (CASS 7A.2.5R(-2)). IBP is then under an obligation to distribute the client money pool "*as soon as reasonably practicable*" to clients in accordance with their client money entitlement (CASS 7A.2.2R(2)). The size of the client money pool held by IBP is expected to be, or will be, £30.1m.[2]

11. On the basis of its position that the assets and funds it transferred were "client monies", All Blue has submitted a claim to client monies valued at £21.2 million in IBP's special administration.

12. Against this, however, the JSAs' position is that the relevant assets/funds were received and held by IBP, not as "client monies" but under a title transfer collateral arrangement ("TTCA") pursuant to IBP's terms of business ("ToB").

13. A TTCA is defined for the purposes of CASS 6 and 7 as "*an arrangement by which a client transfers full ownership of money* [or a safe custody asset (or an asset which would be a safe custody asset but for the arrangement)] *to a firm for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations*".

14. The JSAs say that there are advantages for clients such as All Blue of trading on TTCA terms, including access to certain investment products not otherwise available. These products include contracts for differences and leveraged trading in securities.

15. CASS 7.11.1R(4) provides that money held subject to a TTCA (so long as the client is not a retail client) is not "*client money*" for the purposes of CASS 7. Likewise, CASS 6.1.6R(4) provides that (again so long as the client is not a retail client) custody rules under CASS 6 do not apply to assets subject to a TTCA and which would otherwise be a safe custody asset. All Blue was not a retail client of IBP.

16. The significance of the issue in the Proceedings is thus that if the Disputed Clients (which I define further below) were trading on TTCA terms with IBP, then they are not entitled to participate in the distribution of client money between clients under CASS 7 (because they have no "*client money entitlement*") nor to the return of safe custody assets. Thus, in the case of All Blue, if IBP in its special administration held the transferred assets/funds under a TTCA, this would mean that All Blue is an unsecured creditor in IBP's estate.

2 Mr Bennett explains at Bennett 1, 60-61 that the method for arriving at this figure differs depending on the determination of the TTCA Issue. The crucial point for present purposes is that regardless of the answer to the TTCA Issue the ultimate figure arrived at is the same.

17. Amongst the matters the JSAs rely on in respect of All Blue (in particular) is that at the point IBP entered into special administration the firm's records indicated that All Blue was trading under a TTCA. Further, and the point that has occasioned a dispute as to whether permission should be given for expert evidence to assist interpretation of the ToB and characterisation of the transfers of assets and funds, an analysis undertaken at the instance of the JSAs of the trading relationship between All Blue and IBP is said to be consistent only with such assets/funds having been posted as collateral under a TTCA.

18. Broadly the same issues arise also in respect of a number of "Disputed Clients" in the IBP special administration, who also contend that they are CASS creditors but where IBP's records record there having been a TTCA in place. These include All Blue Falcon FZE, Farmco Holdings Limited, Red Rowan Investments Ltd ("RR"), Verette Schimmel Livshitz, and Worldwide Instruments Inc (with All Blue, "the Disputed Clients" and without All Blue, "the Other Disputed Clients").

19. The broader issue as to the nature of the trading between the parties and the resolution of any issue as to the application of the TTCA ("the TTCA Issue") will also impact the return to other clients of IBP from the client money pool i.e. if any of the Disputed Clients are entitled to share in the client money pool, then the distribution to other clients who it is accepted were CASS Clients and whose entitlement to such a share is not therefore disputed ("Undisputed Clients"), will be reduced.

20. Mr Bennett has explained the practical consequences of the resolution of the TTCA Issue either way in his first witness statement. In summary:

(1) The JSAs have received £54m of claims to client money from Undisputed Clients, including a claim of £30.3m by Casterbridge Wealth Limited (on behalf of retail clients) which has not yet been accepted and is being considered.

(2) In addition, IBP has received client money claims from the Disputed Clients of £23.2m, of which £21.2m is from All Blue.

(3) The JSAs expect to receive between £60-70m in unsecured creditor claims, which is subject to the determination of FSCS compensation and the TTCA Issue.

(4) In calculating the potential economic consequences for all those interested in the pool, the Disputed Clients and other clients, the JSAs have assumed that: (a) the total claims made by Undisputed Clients will be £50.4m (i.e. the Casterbridge claim is accepted in full); (b) there will be no recoveries into IBP's own estate (referred to as the house estate); and (c) no account is taken for the costs of distributing the client money pool (which are payable from the client money pool under CASS 7.17.2R).

21. The possible economic consequences of the determination of the TTCA Issue is illustrated in the following table taken from the evidence provided by the JSAs:

		Disputed Clients are TTCA	**Disputed Clients are not TTCA**
Disputed Clients	Indicative return	Nil	£9.4m
	% return	0%	38%
Undisputed Clients	Indicative return	£30.1m	£20.6m
	% return	56%	38%
Creditors	Indicative return	Nil	Nil
	% return	0%	0%

22. Thus, the resolution of the TTCA Issue is of economic interest to both the Disputed Clients and the Undisputed Clients:

(1) In the event that the TTCA Issue is resolved in favour of the Disputed Clients, the % distribution to Undisputed Clients would decrease from 56% to 38%; and

(2) in the event that the TTCA Issue is resolved in favour of the Disputed Clients, the % distribution to Disputed Clients would increase from 0% to 38%.

23. The issues have wider systemic importance too. This is (as All Blue submitted) *"something of a test case in the IBP special administration and the wider market"*. The operation of CASS and TTCAs are of systemic importance to the financial market[3] but have been litigated infrequently. As a result, there has been limited case law on the proper interpretation and application of terms alleged to be TTCAs to date.

Agreed Issues for determination

24. To determine the entitlements as between themselves and of all those interested in the client money pool, the parties have agreed the issues set out in Appendix 1 to a consent order agreed between the parties dated 3 March 2026 (the "Consent Order").

25. These are as follows (in overview):

(1) First, the proper construction of the ToB, i.e., the circumstances in which it was agreed that assets/funds would be held by IBP subject to TTCA rather than CASS. In particular, at issue is whether the ToB were sufficient in and of themselves to create a TTCA within the meaning of CASS, or whether assets/funds had to be transferred to IBP in response to a specific demand for a TTCA ("Issue 1").

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[3] See for example *Lehman Bros International (Europe) (in administration) v CRC Credit Fund Ltd* [2012] Bus LR at [47] where Lord Walker held that CASS 7 should be construed in accordance with the objectives of Directives 2004/39/EC and 2006/73/EC of achieving a high level of protection of clients' money by the prompt and scrupulous segregation of clients' money. See also *Re Wright and Hudson (as joint administrators of EC3 Brokers Limited)* [2026] EWHC 829 (Ch), where Chief ICC Judge Briggs referred at [29] to the need to maintain market confidence through the protection of client assets.

(2) Second, the application of the ToB (so construed) to the transactions in fact entered into by All Blue with IBP. This is a question of fact and involves on IBP's case (among other things) an analysis of trading data for the transactions between All Blue and IBP (hence the Trading Report), in addition to the other evidence that will be before the Court at trial ("Issue 2").

26. A 3-day trial is listed in a window from 15 January 2027, with a pre-trial review listed in a 3-day window from 2 December 2026. IBP/the JSAs have already filed and served their evidence (including the Trading Report). All Blue is due to file and serve its evidence by 25 September 2026, with reply evidence from IBP/the JSAs due on 16 October 2026.

The primary issue now: whether to give permission for expert evidence

27. All Blue submits that expert evidence is required to address, and to enable the Court properly to understand and assess, the issues for determination at trial as detailed above at paragraph 26 and set out in Appendix 1 to the Consent Order, which is attached to this judgment for convenience.

28. However, the JSAs submit that the Issues should be determined by construing the ToB in their statutory context for which purpose expert evidence is neither necessary nor justified.

The tests to be applied

29. The tests to be applied in determining whether to give permission for expert evidence were not substantially disputed.

30. Pursuant to CPR r35.1, expert evidence must be restricted to what is reasonably required to resolve proceedings. Further, CPR r35.4(2) provides that where a party seeks permission for expert evidence they must identify: (a) an estimate of the cost of the proposed expert evidence, (b) the field in which expert evidence is required and the issues which the expert evidence will address, and (c) where practicable, the name of the proposed expert. The Court must interrogate closely any application for permission to adduce expert evidence.

31. As explained in *The RBS Rights Issue Litigation* [2015] EWHC 3433 (Ch) at [11]: "There are two elements: (i) is the evidence admissible, and (ii) is the evidence reasonably required to resolve the proceedings?". The first requires there to be a "recognised expertise" (at [13]-[14]). The second requires the issue to arise on the pleadings and for the subject matter to be such that the Court would not be able to form "a sound judgment on the matter without the assistance of witnesses possessing special knowledge or experience in the area" (at [16]-[17]).[4] See also *British Airways Plc v Spencer* [2015] EWHC 2477 (Ch), [2015] Pens LR 519 at, e.g., [63] and [68] (Warren J).

[4] This does not mean that the proposed expert evidence must be "*necessary*" or "*determinative*": *Mitchell v News Group Newspapers Limited* [2014] EWHC 3590 (QB) at [24]-[27] (Warby J).

32. As regards contractual interpretation, a court may receive independent expert evidence of the practices of a particular market or their genesis and objectives if that is relevant background knowledge for the purposes of interpreting the terms of the contract: *Crema v Cenkos Securities plc* [2011] 1 WLR 2066, at [42]-[45] *per* Aikens LJ.

33. Such evidence is not confined (as it once was) to evidence of "trade usage and custom" and may extend to evidence of the way that business is transacted (for example, in *American Airlines Inc v Hope* [1973] 1 Ll Rep 233, as an "aid to the construction of the laconic Lloyd's slips which contained the relevant insurance terms", especially "for the purpose of converting it from "shorthand" to "longhand").

34. However, both the difficulty in understanding what a disputed term or provision means without regard to market practice, and identification of what the market practice is which is directed to and will assist in the resolution of the difficulty identified, must be provided. The view of an expert as to the meaning of a disputed provision in the field is not of itself admissible and indeed would usurp the function of the Court: to be justified, the expert evidence must be of some established and illuminating market practice or understanding which is likely relevantly to inform the context in which the disputed term or provision is to be interpreted.

35. Further, the Court should not permit evidence merely because it may, in general terms, be helpful: even if it is not essential, it must at least be reasonably required to form a true understanding of the disputed provision: see the questions which Warren J suggested in *British Airways PLC v Spencer* [2015] Pens LR 519 at [68]. The court should ask itself:

    (1) Is the expert evidence necessary to decide an issue rather than being merely helpful?

    (2) If it is not necessary, will it assist the judge in determining an issue? If it would assist but is not necessary, then the court should consider:

    (3) Is expert evidence reasonably required to determine the proceedings?

All Blue's submissions

36. All Blue's argument has focused on the Trading Report which is relied on by the JSAs. All Blue contends that there are opinions expressed in the Trading Report as to the nature of the trading *"which would obviously be more appropriate for an expert report"* and that *"The Trading Report is essentially a vehicle for expert evidence without permission or the safeguards required by CPR Part 35"*.

37. All Blue goes on to: (a) reserve its position as to the admissibility of the Trading Report; (b) caution that even if admitted into evidence none of the JSAs could usefully be cross-examined about it since it is *"someone else's work product"*; and (c) the answer is for both parties to be given permission to adduce expert evidence in the field of expertise of CASS compliance/market practice and analysing securities trading/margin data.

38. All Blue proposes that such expert evidence should address the following issues:

(1) The general market and regulatory/compliance context in which the ToB were agreed. Mr William Day of counsel, on All Blue's behalf, submits that material going to the market practice and industry context relating to CASS and TTCAs is plainly relevant to the question posed by Issue 1 of how a reasonable person would have construed the ToB. He relies on *Crema v Cenkos* in which the Court of Appeal considered whether a court could "*take into account expert evidence on "market practice" for the purposes of ... the construction of the express terms of a contract*", and confirmed that it could: "*a court will be entitled to receive independent expert evidence of what "market practice" is if that is relevant background knowledge for the purposes of interpreting the terms of the contract, both explicit and implicit*" (at [42]), adding "*it has been common practice for the Commercial Court to hear evidence of "market practice", which does not amount to evidence of an alleged "trade usage or custom", in order to assist the court with a full understanding of the factual background to the proper construction of a written contract*" (at [43]).[5] All Blue submits that even if not strictly necessary, such independent evidence would assist the Court in this case in construing the express terms of a contract such as the ToB by providing context as to relevant background knowledge that would reasonably have been available to the parties at the time that the contract was executed.

(2) The analysis and interpretation of trading data relevant to Issue 2, including evidence confirming whether and to what extent the trading/margin data identified in the Trading Report shows that:

(a) transactions entered into by All Blue with IBP required the deposit, payment or exchange of any margin or collateral within the meaning of clause 11.1 of the ToB; and

(b) assets and/or monies transferred to IBP by All Blue pursuant to such transactions were held as TTCAs rather than subject to the requirements of CASS 6 and/or CASS 7.

All Blue submits in this regard that there can be no sensible dispute that presenting and collating trading data is a recognised expertise: the JSAs themselves say that they have used a "*consultant trading expert*" (unnamed) in assembling the Trading Report. In this case, it is submitted, expert evidence is reasonably required simply to meet the case that is being advanced by the Trading Report. All Blue has no factual witness who can consider and respond to the evidence in the Trading Report, and nor would that be appropriate given the requirements of CPR Part 35. Mr Day submits that the analysis of the trading data and practical trading activity (including the potential transfer and use of margin) is now, by instigation of the JSAs, a central issue in these proceedings in respect of which the parties and the Court would benefit significantly from expert input.

5 See also *Proton Energy Group SA v Public Co Orlen Lietuva* [2013] EWHC 334 (Comm) at [29].

The JSAs' submissions

39. In support of the JSAs' contrary position that there is neither need nor justification for expert evidence in this case Mr Al-Attar KC submits as follows (in summary):

(1) Issue 1 is a question of construction of the ToB, which are set out in a professionally drawn up contract, and of whether the relevant terms create a TTCA within the meaning of the CASS rules. Expert evidence would not usually be permitted on such a question of construction. Mr Al-Attar relies on such cases as *Change Red Ltd v Barclays Bank Plc* [2016] EWHC 3489 (Ch) at [36]-[42]. He accepts, of course, that the regulatory background is relevant: but he submits that that is sufficiently apparent from CASS 6 and CASS 7, which are themselves rules to be construed according to principles of statutory construction and do not require expert exposition. Mr Al-Attar submits also that to the extent that All Blue apparently now wishes an expert to opine on what it describes as "[g]*eneral CASS compliance/market practice*", it has failed to identify how it is said that an expert might assist the Court in determining what CASS requires, and likewise it is not clear what practice in the market is relied on as illuminating either the construction or application of the CASS rules.

(2) Issue 2 is concerned with whether the TTCA provisions in the ToB applied to the transactions which All Blue entered into with IBP. That is a question of fact which depends on the evidence as to what the actual transactions which All Blue entered into were and whether they involved the provision of margin. Whether All Blue entered into transactions which involved the deposit of margin is a question of fact, not expert opinion. It is not one on which expert opinion is required or is admissible. There is no opinion to be expressed in relation to those questions which are both about the facts relevant to All Blue's trading relationship with IBP. It is not the role of an expert to find facts but, rather, to express an expert opinion on the basis of assumed facts: see Phipson on Evidence at [33]-[37] ("*In general an expert's role is not to find facts but to express an opinion, on assumed facts or those presented to him.*"), citing *JP Morgan v Springwell* [2006] EWHC 2755 (Comm) at [21] per Aikens J ("[I]*t is not for experts to attempt to make findings of fact. Instead, they should express their opinion on the area in which they have their expertise on the basis of assumed facts which should be clearly identified and stated in their expert report.*").

40. As to the Trading Report itself, and All Blue's position that it is a vehicle for expert evidence to be adduced without permission, the JSAs' answer is that:

(1) The Trading Report sets out the facts which the JSAs have established from their investigations of All Blue's trading position with IBP.

(2) The JSAs have described the three matters set out in the substantive sections of the Trading Report as follows:

(a) First, the Trading Report records the results of the JSAs' investigations into the trading conducted by All Blue with IBP. This is principally concerned with the comparison between two facts: (i) the cash position of All Blue, and (ii) the open market value of the positions held by All

Blue with IBP at any one time. The JSAs' case is that the comparison of these two numbers shows that there were significant periods where, as a matter of fact, All Blue's market exposure was greater than the cash it had provided to IBP, demonstrating that All Blue's open positions were not fully covered. The JSAs have stated the published sources relied on for the open market value of the positions held by All Blue with IBP at any one time. The JSAs stress that they have not offered any opinion as to market value and there is no dispute as to the appropriateness of the sources used by the JSAs. All Blue has relied on the use of the word "*indicate*[d]" in three paragraphs of the Trading Report: namely paragraphs 3.7, 3.10 and 3.12. The sole point which is made in those paragraphs is that one number (the market exposure IBP had to All Blue, a question of fact) is bigger than another number (the cash held by All Blue with IBP, another question of fact) and the effect of that is that All Blue was trading on a leveraged basis i.e. its positions were not fully covered. It does not require an expert to compare two numbers to reach that conclusion; it is a conclusion which it is difficult to understand how All Blue could deny if those facts are correct. All Blue has not said it does deny those facts.

(b) Second, the Trading Report offers an explanation and summary of the trading statements which IBP provided to All Blue, showing: (i) the application of a margin rate to open positions, (ii) that cash was recorded as "*TTCA Cash*", and (iii) the application of a consolidated margin requirement. An explanation and summary of trading statements that IBP provided to All Blue contemporaneously is not a matter for expert evidence, nor has any opinion been given about them. Those statements are documents that All Blue has or has had and are intelligible without the need for expert assistance. The JSAs have read those statements and reported what they say.

(c) Third, the Trading Report provides examples of correspondence between All Blue and IBP which indicates that trading was being carried out on a leveraged basis. Again, neither the JSAs' review of correspondence, nor that correspondence itself, is a matter that requires the assistance of an expert to understand or evaluate.

41. The JSAs submit, in short, that the Trading Report does not consist of opinion evidence provided with the benefit of expertise. Rather, they submit, it is factual evidence of the trading position of All Blue e.g. the cash All Blue held, the value of open positions it held, the content of its trading statements, and the content of contemporaneous communications. These are not matters requiring, or which would be assisted by, the opinion of an expert: an expert cannot, in general, give evidence on matters of historical fact in dispute between the parties.

Discussion and determination

42. The upshot of these competing submissions is to confirm that the point in issue is a narrow one.

43. There appears to be no dispute for the purposes of the present hearing that the factual comparison on various dates of the amounts of cash and assets deposited by All Blue with IBP ("Adjusted Cash"), on the one hand, and, on the other hand, All Blue's market exposure to trades undertaken through IBP, reveals that the Adjusted Cash deposited by All Blue was often lower than All Blue's market exposure on its trading through IBP. Indeed, it does not appear to be disputed for the purposes of the present hearing that in almost all the period between February 2023 and the middle of August 2023 All Blue's market exposure substantially exceeded its Adjusted Cash position.

44. The issue is whether, in drawing from this the provisional conclusion that the comparison shows that All Blue was trading on a leveraged basis, the JSAs are stating a conclusion arising purely from the mathematical analysis, or whether they are to be taken as thereby purportedly (and impermissibly) expressing an expert opinion or introducing a gloss which, if to be permitted at all, All Blue should be entitled to contradict by adducing expert evidence of its own.

45. Put another way: does the arithmetical comparison in the Trading Report of itself sustain or warrant the JSAs' suggested conclusion that All Blue posted the funds to support leveraged trading, or is the reality that there could be another explanation and the JSAs have introduced assumptions or a gloss in the nature of a subjective assessment which should or could usefully be tested or illuminated by expert evidence as to market practice?

46. In the circumstances, and as I repeatedly put to Mr Day in the course of the hearing, I think this would come down to whether the proposed expert evidence would point to market practice which would support another explanation of the trading history than that supposed by the JSAs and, in particular, provide some alternative or other reason for the differences between the funds posted and the value of trades than collateral for leveraged trading.

47. During the course of the hearing, I asked Mr Day whether Mr Colin Bugler, the expert whom All Blue proposed to instruct, would *"offer standard market reasons why someone might do that with a trader?"* Mr Day told me in response he did not feel able, on his feet at any rate, to (as he put it in one of his answers) *"go quite that far."* The furthest he felt able to go at the hearing was that All Blue should be permitted to advance expert evidence *"by having someone who has got expertise about how people in the market look at trading data and whether they draw any conclusions from it of whether this is margin or whether it is…client money"*. He then added that *"What he will say is that one cannot just look at the numbers in any given case and say that points to a conclusion. You have to look at what actually transpired between the parties…So it is a relatively hermetically sealed dispute about whether this limb of the JSAs' case, that one can look at the trading data and that provides a reason for thinking that there were TTCAs in this case, works or not."*

48. The difficulty I have felt is in assessing what would be the focus of the proposed expert report, and whether it would be intended to speak to market practice such as would cast a different light on the matters recorded in the Trading Report. My concern is that the reality might be that such a report would simply be a means of stating an opposite conclusion via an expert.

49. When I pressed, apologetically, for a third time whether it was intended that the proposed report would *"cover alternative market explanations for this pattern of trading"*, or, more simply, whether Mr Bugler would be *"going to offer me some reason why people do this without it being posted as collateral"* Mr Day, fairly, but revealingly, felt unable to spell out quite what the expert would say. It was at this point that he suggested that the most sensible way of gauging whether the expert would assist would be to get him to write a report, and for me then to read it *de bene esse* and determine its utility and admissibility, all at All Blue's risk as to costs.

50. I consider that this suggestion, even if influenced and possibly explained by the scepticism that my questions betrayed, reflects the fact that, as presently presented, this application does not show with sufficient cogency a basis for admission of expert evidence. CPR 35.1 states in terms that the Court must restrict expert evidence to "that which is reasonably necessary to resolve the proceedings." That test might be satisfied if the expert evidence proposed would point to a market practice offering some other explanation of what Mr Al-Attar KC described as the *"imbalance between mark to market value positions versus net asset value"*. However, at present, that does not seem to be envisaged. I do not think it would satisfy the test if all that is proposed is the expression by an admittedly qualified expert of disagreement with a conclusion that is suggested to follow from admitted facts; it would be necessary for the expert to offer a market practice-based explanation for that disagreement.

51. In short, in my view, expert evidence has not yet been demonstrated to be "reasonably necessary" for the purpose of determining the issues in this case, which at heart relate to the interpretation of a professionally drawn up contract and its application to facts in the context of FCA/CASS rules. It is not like the *American Airlines* case (see para [33] above) where expert evidence was required to enable the Court to understand an unusual practice (the laconic Lloyds slips which form the relevant contract in the Lloyds insurance market). The FCA/CASS rules do not need to be explained by a market expert. No market practice to shed light on some particular way in which the FCA/CASS rules are applied has been identified (sufficiently, or indeed at all). The impression given, or which I have formed, is that an expert is proposed to be deployed, without reference to any established market practice, to give the appearance of weight to a conclusion contrary to that provisionally expressed by the JSAs. I do not think that would be likely to be either admissible or helpful; and it could run the risk of usurping the function of the Court (and see also the decision of Master Marsh (sitting in retirement) in *The University of Sheffield v Kudos Pharmaceuticals Limited and Others* [2025] EWHC 1252 which, I agree with Mr Al-Attar, is not unlike the present case). I would dismiss this application accordingly.

52. However, and although Mr Al-Attar warned of the danger that it could de-stabilise the timetable to trial (which must be avoided), and subject to the question of costs, I would not wish to shut out evidence of market practice showing some alternative explanation simply on the basis of Mr Day's inability to commit now to whether it would be available. If it is available, then provided the trial date (and a sufficiently sensible timetable leading up to it) can be preserved, and any prejudice caused by what in effect might have been a premature application can be remedied in costs, my decision now should not preclude a further application. That is especially a concern given the importance of the conclusions otherwise suggested to follow from the facts recorded in the Trading Report.

53. Accordingly, I shall, unusually perhaps, permit a further application for permission to put in expert evidence along the lines I have described, provided that any such application is accompanied (as Mr Day suggested) by a draft of the expert report setting out what is proposed to be stated, at All Blue's risk as to costs, and provided also that any such application must have been served and the relevant draft provided to the JSAs by no later than 15th September 2026.

Issue relating to terms of disclosure

54. Turning to the secondary issue in dispute, All Blue has also sought a direction in respect of any specific emails or other communications disclosed by the JSAs that, upon written request by All Blue for the complete chain or exchange (if not disclosed already), the JSAs shall respond within a period of 14 days confirming whether they will agree to disclose the complete chain or exchange requested, failing which there be liberty to apply.

55. IBP/the JSAs have agreed to this in principle, subject to the inclusion of a proviso that any such request be "*accompanied by an explanation as to why disclosure of the chain or exchange is relevant*" to the issues requiring determination as set out in the List of Issues at Appendix 1 of the Consent Order.

56. All Blue resists the inclusion of the proposed provision on the basis that it risks unnecessary satellite litigation about whether the proviso has been met (e.g., whether any "*explanation*" is sufficient) such that IBP/the JSAs have to provide the confirmation within 14 days and/or an application can be made under the liberty. Mr Day described the proviso as *"over-engineered"* and submitted further that in requiring IBP to state why a wider chain of documents is relevant it *"poses the wrong test"* in placing the onus on All Blue and would require All Blue to *"disclose our trains of inquiry as part of the disclosure process."*

57. I do not consider in all the circumstances the later risk to be significant, having regard to the nature of the case. With the addition to the proviso which Mr Al-Attar suggested of the words "or may be relevant" after "is relevant", I consider that the provision as so amended should be included. As Mr Al-Attar submitted, All Blue would be seeking additional disclosure and should explain the basis on which it is thought to be necessary. It seems to me that the alternative would tend to open the gate to a potentially disproportionate exercise.