Neutral Citation Number [2022] EWHC 3170 (Comm)

Case No: **CL-2020-000626**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

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

Date: **5 December 2022**

Before :

HHJ Pelling KC (Sitting as a Judge of the High Court)

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Between :

(1) Bonnier Books UK Group Holdings Limited (formerly Bonnier Publishing Limited) **(2) Bonnier Media Limited** **(3) Bonnier Zaffre Limited** **(4) Bonnier Books UK Limited** **(5) Igloo Books UK Limited**	**Claimant**
- and -	
Haysmacintyre LLP	**Defendant**

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David Walsh (instructed by **Mishcon de Reya LLP**) for the **Claimant**
Ben Hubble KC and Edward Harrison (instructed by **DAC Beachcroft LLP**) for the **Defendant**

Hearing dates: **5th December 2022**

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JUDGMENT

HHJ PELLING KC:

1. This is an application by the claimants for permission to amend the Particulars of Claim. This is opposed by the defendant on the basis that the proposed amendments as currently formulated raise a new claim for which the relevant limitation period has expired. The claimnst maintain this is nothing to the point because, whilst what is pleaded raises a new claim, it arises out of or substantially out of the same facts as their existing claim and thus satisfies the requirements of CPR r.17.4.

2. The applicable principles are not in dispute. Section 35(3) of the Limitation Act 1980 prohibits the making of a new claim outside the applicable limitation period "*... except as provided by Rules of Court ...*". The scope of the Rules is defined by s.35 and the relevant rule (which is it is accepted is complaint with s.35) is CPR r. 17.4, which provides:

> "The court may allow an amendment where the effect will be to add … a new claim, but only if the new claim arises out of the same facts or substantially the same facts as the claim in respect of which the party applying … has already claimed a remedy in the proceedings."

A "*new claim"* is defined by s.35(2) as one involving " *... the addition ... of a new cause of action ...".* A " *... cause of action ..."* is: " *... a factual situation the existence of which entitles one person to obtain from the court a remedy against another person ..."* – see Mulally & Co Ltd v. Martlet Homes Ltd [2022] EWCA Civ 32*per* Coulson LJ at [40] applying Letang v. Cooper [1965] 1 QB 322 at 242.

3. Where the proposed amendment adds or substitutes a new cause of action to which CPR r. 17.4 applies, four questions arise, being:
    a. Do the proposed amendments seek to add or substitute a new cause of action as defined above;
    b. Is it reasonably arguable that the opposed amendments are outside the applicable limitation period for the proposed additional or substitute cause of action;
    c. Does the proposed additional or substitute cause of action arise out of the same or substantially the same facts as are already in issue in the existing claim; and
    d. Should the court exercise its discretion to allow the amendment.

In this case it is common ground that the first two questions are to be answered affirmatively so that the sole focus of attention is whether the proposed amendments arise out of the same or substantially the same facts as are already in issue and if they do whether I should permit the proposed amendments that would arise if the answer to the third question is also to be answered affirmatively. As to the requirement that a new claim should arise out of the same or substantially the same facts and matters as the existing claim, that is in the end governed by the policy that underlies s. 35 and CPR r. 17.4 - that is, to avoid putting a defendant in a position where they will be obliged to investigate facts or obtain evidence of matters that are completely outside the ambit and are unrelated to the facts that they could reasonably be assumed to have investigated for the purposes of defending the unamended claim: see Mulally (ibid.) at [49].

4. Turning now to the facts of this case. The claim as currently formulated is a claim in breach of contract and negligence against an auditor. The companies whose accounts were to be audited were the UK-registered subsidiaries of a international publishing conglomerate, with the antepenultimate and penultimate holding companies being registered in Sweden. The defendant was the auditor of the UK companies. The group auditors were PwC Sweden. In essence, the claimants claim that in reliance on financial statements that were allegedly negligently audited by the defendant, the claimants wasted some £65 million on an expansion programme in relation to the UK companies which, had those charged with the governance of the UK companies known the true position, would not have been embarked upon.

5. The particulars of claim are lengthy and technical in its description of what the claimants allege the defendant should have done but failed to do. I will, as far as possible, avoid descending into that level of technical detail, because it is not in dispute that these issues will have to be litigated, whether the disputed amendments are permitted or not. A key issue is the meaning of "*those charged with governance*". This apparently straightforward question was the subject of a request for further information under CPR part 18. The response was amended very recently, when the proposed amended particulars of claim in its current iteration was supplied. Insofar as is material, the request and the amended response were in the following terms:

> "33. For each year in respect of which these allegations are made, dealing with each year separately:
> 33.1. Please identify those persons or bodies whom the claimants contend are 'charged with governance' and to HM would, on the counterfactual, have made such communications.

> 33.2. Further, if it be the claimants' case that the persons or bodies other than BAB and BBAB were 'charged with governance', please explain the relevance of the pleaded allegations about the knowledge and/or participation of BAB and BBAB."

I should say that BAB and BBAB were the ante penultimate and penultimate ultimate holding companies registered in Sweden, as referred to earlier. The response to that request was in these terms:

> "33. In respect of FY13 to FY16:
>
> 33.1. The definition of 'those with governance' is set out in ISA 260, at the following relevant paragraphs.
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> Paragraph 10 states: "*Those charged with governance ... the persons or organisations ... with responsibility for overseeing the strategic direction of the entity and obligations relating to the accountability of the entity. This includes overseeing the financial reporting process ... In the UK and Ireland those charged with governance include the directors, executive and non-executive of a company and the members of an audit committee where one exists*."
>
> Paragraph 11 states: *"The auditor shall determine the appropriate persons within the entities' governance structure with whom to communicate*
> ...
> In light of the above, … in breach of paragraph 11 of ISA 260, HM failed to determine the appropriate persons within the claimant entities' governance structure with whom to communicate. HM should have identified that those charged with governance, in the context of the matters to be communicated, ISA 260, paragraph (a)(3), included at least: (1) the boards and board members of each claimant and, (2) the board and board members of BAB and BBAB."

This formulation thus alleges both a failure in breach of contract and duty to determine the appropriate persons with whom to communicate and that the defendants should have determined that those persons included at least the board and board members of each of the claimants and the penultimate and the ultimate holding companies. Although the phrase "*at least*" suggest others apart from those identified, no particulars of these others are given. It follows that the claimant would probably not be permitted to rely on others at trial, unless the pleadings or further information was amended so as to identify what others were implicitly being referred to. Although it is open to the claimants to explore that answer further, there is no obligation to do so.

6. Before turning to the proposed amendments, it is necessary that I set it out, in its correct chronological and procedural context. The claim relates to the financial years 2013 to 2016. The claim form was issued on 25 September 2020. The first CMC took place as long ago as 18 November 2021. The trial has been fixed to commence on 9 October 2023. The non-binding assumption at the CMC was that the claimant would probably need to amend its particulars of claim and would aim to provide a draft by no later than 4 July 2022. In fact, although a draft amendment was provided then, it was replaced on three subsequent occasions, with the draft the subject of this application being provided on 11 November 2022, together with the evidence in reply to this application and the amended further information to which I referred earlier. As things currently stand:
    a. Witness statements are due to be exchanged on 8 December 2022;
    b. Supplemental witness statements are due to be exchanged on 31 January 2023;
    c. The claimants' expert report is due to be served on 9 February 2023 with the defendants to follow on 4 May 2023; and
    d. The expert evidence sequence is due to be completed by 13 July 2023.

    It is common ground that in the light of the amendments to which the defendant has consented, there will have to be directions concerning amending the defendant's pleadings and refixing of at least some of the procedural steps referred to above, which all nonetheless have to be completed in time for the trial commencing on 9 October 2023. In my judgment, therefore, unless great care is taken, the trial date is at least realistically arguably at risk. This impacts upon the discretion issue that arises under the fourth question identified earlier.

7. Turning now to the disputed amendments. They are to paragraphs 34, 46, 50 and 57. The amendment to 57 is, as I see it, parasitic on the amendments proposed to paragraph 34.

8. Turning first to paragraph 34, the objection to the amendment is that it alleges for the first time a duty on the part of the defendant to report not merely to those charged with the governance of the claimants as part of the audit function, but to PwC Stockholm, as soon as reasonably practicable, after the information which it is alleged ought to have been ascertained by the defendant ought to have become apparent to the defendants. The claimant wishes also to amend, so as to allege that had the relevant facts and matters been reported to PwC Stockholm, then PwC Stockholm would have reported those matters to those charged with the governance of the

claimants. The defendants allege that the consequence, if this amendment were permitted, would be to require a full investigation of:

a. The relationship between the defendants and PwC Stockholm, because the claimant relies on communications to the defendants from PwC Stockholm; and
b. The relationship between PwC Stockholm and the holding companies, and those charged with the governance of the claimants, if different; for the purpose of ascertaining what information would have been provided, to whom and when, if the defendants had passed the information to PwC Stockholm, whenever it is alleged, if it should have been supplied.

The defendants maintain that those are significant new areas of enquiry that are entirely new and do not arise, even substantially out of the facts on the current pleaded claim.

9. Against that background, I turn to the proposed amendments. As currently pleaded, it is alleged that the defendants owed the claimants:

> " ... 35.1. An express or alternatively an implied duty in contract to plan and carry out the audits with reasonable care and skill and to comply with all relevant audit standards, including
>
> (1) the International Auditing Standards issued by the Auditing Practices Board with the Financial Reporting Council as International Standards on Auditing in UK and Ireland [ISAs] and
>
> (2) the audit regulations and guidance of the Institute of Chartered Accountants in England and Wales ... and/or:
>
> 35.2. A duty of care in tort to exercise all reasonable skill and care in planning and carrying out the audits, having regard to all relevant audit standards ..."

Paragraph 36 goes on to plead:

> "The above duties ... required HM to
>
> ...
>
> 36.7. Communicate to those charged with governance (i) HM's views about significant qualitative aspects of the claimants' accounting practices, including accounting policies, accounting estimates and financial statement disclosures; (ii) if a significant accounting practice was not the most appropriate to the particular circumstances of the claimants, although acceptable under the applicable financial reporting

> framework; (iii) any significant difficulties encountered during the audits; (iv) other matters, if any, arising from the audits that in HM's professional judgment were significant to the oversight of the financial reporting process ... and (v) the misstatements that HM did in fact identify ..."

Paragraph 36.13 added that those obligations included an obligation to *"(d)raw to the attention of those charged with governance in writing any significant control weaknesses or deficiencies in internal control identified as part of the audits on a timely basis ..."*

10. Breach is pleaded in Section F of the current particulars of claim. In summary, at paragraphs 38 and 39, it is alleged that the defendants failed to identify or report to " ... *those charged with governance ... various alleged accounting failures.*" The counterfactual allegations are those set out in section F of the pleading and, as currently pleaded, allege that, but for the breaches alleged, all the findings that should have been made would have been communicated by the defendant to " ... *those charged with governance* ..." and to cut a long story short, the costs incurred in implementing the expansion plan would not have been incurred, if that information had been reported as allegedly it should have been.

11. The first disputed amendment is to the proposed inclusion of a new section D(1), entitled "*Communications between [the defendant] and PwC Stockholm*". This section contains 20 sub and sub-subparagraphs set out over about three pages. Paragraphs 34(a) and (c) to (f) refer to communications sent to the defendant by PwC Stockholm. Paragraph 34(b) pleads:

> "HM owed a continuing duty to the claimants to respond properly and promptly to PwC Stockholm's requests; although HM responded to those requests in each of FY13 to FY16 and failed to do so properly or promptly as set out herein ..."

and at paragraphs 34(h) and (i), it is alleged:

> "34(h). In the premises, HM owed a continuing obligation to the claimants to report to PwC Stockholm in writing, as soon as reasonably practical, if HM encountered any of the issues that had been identified by PwC Stockholm and communicated to HM.
> "34(i). In each instance HM's failure to do so constituted a continuing breach of duty which commenced on the date each issue should have been reported to PwC Stockholm."

The duties are alleged to arise as a result of the communications between PwC Stockholm and the defendants, but to date those have not been relied upon for any other purpose.

12. The claimant maintains that the allegations that the defendant was under a duty to report to PwC Stockholm, as well as those charged with governance, as particularised in the amended further information, plainly arise substantially out of the same facts. The communications relied upon by the claimants to the defendants from PwC Stockholm were disclosed by the defendants as part of their extended disclosure, thereby emphasising the substantiality of the connection between what has been so far alleged and what the claimant seeks permission now to allege. The claimant acknowledges that there are new areas of factual enquiry that will arise concerning (a) whether the defendant should have reported to PwC, and (b) whether and when PwC would have passed on the substance of these communications, if made, and to whom and with what consequence. However, they submit this is not to the point because the new allegations are ones that arise substantially out of the same facts as are currently alleged. The claimants submit that there should be no difficulty in permitting the proposed amendments as a matter of discretion, because if and to the extent the defendant seeks to rely on expert evidence, they have until next May to do so under the current timetable. There is no evidential issue that arises, so far as the defendants are concerned, because it is common ground that the defendants did not report on any of the facts and matters it is alleged they should have, either to those charged with governance of the relevant companies, or to PwC Stockholm and overall it is the claimants, not the defendants, that will suffer from any procedural difficulties that arise if permission as sought is granted.

13. Whilst I accept the issue may not impact on the evidence that the defendants would wish to adduce, I cannot conclude that that will certainly be so, not least given the absence from the proposed amendment of any case that the defendant was required to report to PwC, other than by reference to the communications from PwC itself. Further, and in particular in relation to the second of the two areas of factual enquiry identified above, there will almost certainly require further disclosure issues to be formulated and disclosure given; in particular, by reference to what was expected of PwC. Disclosure in this case should have been completed by 22 May 2022, under Mrs Justice Moulder's CMC directions; and witness statements are due to be exchanged, as I have said, on 8 December 2022. This procedural congestion might have been reduced, at least, had the claimants served the amendments they seek earlier than with the reply evidence.

14. The defendant submits that I ought not to permit these amendments, essentially because the plea is one of a freestanding and new duty. It is, I think, accepted that the claimants could have relied on the communications from PwC Stockholm as supporting their case that there was an obligation to consider and report on the matters specifically referred to by PwC Stockholm in the correspondence, if the defendants were to comply with the currently pleaded contractual and tortious duties. However, that is not how the amendments are pleaded. Paragraph 34(b) pleads a freestanding and new duty to report to PwC Stockholm. Paragraph 34(d) pleads an "i*nstruction*" by PwC to the defendant, as does subparagraphs (e), (f) and (g); and subparagraph (h) pleads a "*continuing obligation*", whereas paragraph 34(i) pleads a continuing breach of duty to report to PwC Stockholm. The defendant's point is that this is all entirely new and does not arise out of the currently pleaded facts, which merely form the backdrop for what is an entirely new allegation, raising at least the factual issues to which I referred earlier. Further, this allegation is not a duty which is said to be coextensive with that currently alleged, but expands the case significantly by requiring the defendant, if what is alleged is correct, to report to PwC Stockholm the alleged deficiencies as soon as they were discovered, and not merely at the year end or as part of the auditing exercise. As Mr Hubble QC put it, this is why what is pleaded is not pleaded as particulars of an existing alleged breach and why it is necessary for a new duty to be alleged. I canvassed with Mr Walsh whether permission might be given for at least the fact of PwC's correspondence, as particulars in support of the currently alleged breach of duty, but he rejected that approach, maintaining that the new duty was key to what was alleged.

15. Mr Hubble submits that this is not a mere technicality, but points to a significant new area of factual investigation. As to that, whilst he would, I think, accept, if pushed, that this might not be a major task in relation to whether there was a duty to report to PwC on the basis alleged in the proposed amendment (though that will not be fully apparent until the alleged factual basis for the alleged obligation has been further explored by requests for further information and the like), he would maintain that that is not so in relation to the second element - that is, what PwC would have done with the information, if it had been supplied and when. He submits, and I accept, that this will require the formulation of additional disclosure issues and the disclosure by the claimants of material governing the scope of PwC Stockholm's duties and to whom they were owed in 2013 to 2016. I accept that it is at least a real possibility that this will trigger the need for expert evidence going to the duties owed in law by PwC Stockholm and also possibly

as a matter of professional regulation or practice in Sweden, given that what is alleged relates to a relationship governed by Swedish law and practice. It may be that ultimately this leads to the conclusion that PwC Stockholm were under a contractual or delictual duty to pass on what they were told, when they were told it, to those charged with the governance of the claimant companies; but it cannot sensibly be said that that issue will not have to be investigated, if what is proposed by way of amendment were permitted. In summary, Mr Hubble submits that this proposed amendment raises for the first time a new and more extensive duty than that currently pleaded, which has been raised for the first time outside the relevant limitation period which will require significant factual enquiries that are at a relatively late stage in the litigation process and should not be permitted.

16. In my judgment, this amendment is one that I should not permit. My reasons for reaching that conclusion are as follows. Firstly, I approach the issue, applying the policy considerations I referred to earlier. If I were to give permission as sought, I would be failing to give effect to the policy of the law which is to protect the defendant from having to investigate facts and obtain evidence in relation to matters that are unrelated to those facts that the defendant could reasonably be expected to investigate for the purposes of defending the unamended claim. Two points were made in answer to this. The first was that the documents relied upon were disclosed by the defendants, but in my judgment that takes matters no further, particularly having regard to the test for disclosure. The short point is that the documents may be relevant evidentially to the breach allegations as currently alleged, but that is nothing to the point in relation to the proposed amendments and to the role of PwC Stockholm. The disclosure does not lead, in my judgment, fairly to the conclusion that the defendants could be expected to investigate on any view the second of the two new factual issues that would arise if an amendment were to be permitted - that is, how and when, if at all, PwC would deal with the information it is alleged they should have been supplied with, but were not in the event supplied with. PwC apparently supplied instructions on specific areas for investigation, which is a matter of record in the correspondence concerned. However, whether the defendant should have reported to PwC as well as, or instead of those charged with governance of the company, and if so when and with what result, are not issues which have currently been, or could reasonably be the subject of enquiry, and do not arise on the pleadings as they currently stand.

17. Secondly, what is pleaded as an additional duty is not a facet of the existing duty pleaded. Section (e) of the pleadings sets out the defendant's alleged duty as auditor. There is no mention of a duty to report to PwC Stockholm anywhere within that section. Insofar as the duty to report is referred to, it is a duty to report to those charged with governance - see paragraph 36.7 and paragraph 36.9, including in particular those words inserted by amendment and paragraph 36.13. Breach of contract and duty is addressed at Section F of the pleading. Again, that refers exclusively to a duty to report to those charged with governance - see paragraph 38, opening lines, and paragraph 39, opening lines. Sections F1 to F4 set out only the particulars of those allegations - see paragraph 41 of the particulars of claim.

18. The first time PwC is mentioned after the proposed Section D(i) of the draft amendments is in Section H, headed "*The counterfactual*", where it is proposed that paragraph 57.1 be amended so as to change "*HM would have communicated all significant findings to those charged with governance ...*" to " *... HM would have communicated all significant findings to both PwC and those charged with governance ...*" It is also proposed to amend paragraph 57.3, so as to allege that the ante penultimate and penultimate holding companies would have become aware of the matters it is alleged they should have been informed about " *... either by virtue of being amongst those charged with governance or by reason of being informed by PwC Stockholm ...*" On this basis, the amendment can only succeed if the claimants are able to establish a new and apparently exclusively tortious duty to communicate to PwC Stockholm "*properly and promptly ...*" and "*as soon as reasonably practicable*". As is apparent from the terms of Section D(i), breach of that duty is alleged further or alternatively to the currently pleaded case. Further, the duty is a different and potentially more extensive duty than arises by reason of duties owed in the role of auditor, because it is framed as a continuing duty to respond both properly and promptly. It is that freestanding and more extensive duty that gives rise to the factual areas and enquiry to which I have referred, to the need for further disclosure and the possible need for foreign law and regulatory obligation evidence. In those circumstances, I reject the claimant's submission that this allegation is, simply part of the duty already pleaded. It is not. It is a freestanding or extensive duty in tort to report to PwC Sweden, not a concurrent contractual and tortious duty to perform the audit with reasonable care and skill.

19. Had it been necessary to do so, I would have hesitated before giving permission on discretionary grounds. I don't accept that what is alleged had to await disclosure. The communication from

PwC ought to have been in the claimants' possession from the outset. Secondly, I do not accept that the cause and effect of the alleged breach of the alleged duty has been fully or sufficiently pleaded. It would have been a matter for argument as to whether it should have been pleaded with full particularity from the outset or whether it should be left to a request for further information of the amendments, had they been permitted. What is clear, however, is that the defendants could not be required to plead to the new allegations until issues such as when the breach is alleged to have occurred and what cause that is said to have had, have been fully pleaded out. It is clear that further disclosure issues would have to have been formulated and responded to. In practical terms, that would require a timetable for repleading and a significantly revised timetable for witness statements and expert reports. On the current timetable the expert sequence was due to end on 13 July 2023, with the trial following in the first week of October of that year. I have not investigated whether what would have been needed could have been achieved practicably, so as to enable the trial to proceed without undue disruption to pre-trial preparation, but in my judgment, if these amendments had been permitted it is likely that there would have been significant difficulty and disruption n the immediate run-up to the trial, which would have had to have been investigated in much greater detail, had I been minded in principle to grant permission in relation to the new alleged duty.

20. I now turn to the applications to amend paragraphs 46 and 50. In relation to the former, Mr Hubble made clear that if all that this was intended to do was to provide particularisation of the existing alleged breach, he would not maintain his objection. That is the only basis that the application to amend paragraph 46 can now be maintained, given my conclusions in relation to the proposed addition of Section D(i). I permit the proposed amendment of paragraph 46 on that basis.

21. Finally, in relation to paragraph 50, the same concession as was made in relation to paragraph 46 is made in respect of paragraph 50 and subject to that point, I give permission for the amendment, for the same reasons.

22. The sole issue that remains concerns firstly the inclusion of the phrase " ... *were willing and/or able* ..." in the phrase "*HM should also have been aware that there were limits to the extent to which BAB and BBAB were willing and/or able to provide or approve the resources on which each of the claimants depended* ..." Mr Hubble submits that the inclusion of the phrase " ... *or*

able ..." introduces issues of affordability which so far have not been in issue in these proceedings. Mr Hubble submits that there is no attempt to particularise this allegation or the implied allegation that the defendants should have known about the issue, and on that basis Mr Hubble submits that permission ought not to be given, since it is impossible for the defendant to know the case it must meet on the currently formulated paragraph 50. Mr Walsh maintains that the issue has been put beyond doubt by correspondence between solicitors.

23. As a matter of principle, that which Mr Walsh relies on is not a satisfactory basis for resolving a pleading ambiguity in a proposed amendment, particularly one that has gone through as many iterations as this one has. The pleadings set the agenda for the trial and for all the pre-trial steps that have to be taken prior to a trial. By the time of the CMC, the pleadings should be closed, so as to enable directions to be given on that basis for the conduct of the case to trial. Late amendments, other than those that genuinely arise from disclosure, in circumstances where there is an asymmetry of information between the claimant and the defendant, are objectionable for that reason. It is for that reason that the proposed amendments that are late should be properly particularised - see the reasoning in Swain Mason v Mills & Reeve [2011] EWCA Civ 14 [2011] 1 WLR 2735. If the proposed amended pleading contains an ambiguity that has been disavowed in correspondence before the application to amend is determined, the solution does not lie, generally at least, in giving permission, but referring to exculpatory correspondence in recitals to the order that is made giving permission, particularly when the correspondence itself may be ambiguous and subject to dispute at a later stage. The solution lies in reformulating the pleadings.

24. Mr Walsh maintains that the intention was to allege that if the correct information had been provided, the decision-makers would not have been able to support the strategy that gives rise to the losses which would thereby have been avoided. If that was what was intended, then the pleadings should either have been limited to the words "*willing to*". I would have been willing to give permission in relation to an amendment which confined the proposed amendment to the words "*willing to*" or which contained words which made clear that the allegation was as Mr Walsh alleged. However, as things stand, that is not the position and therefore, unless Mr Walsh is willing now to reformulate the proposed amendment, permission must be refused.

25. That leaves over a final point concerning particularisation of the allegations that are made in the amended paragraph. On balance, I am satisfied that permission to amend paragraph 50 can safely be given, subject to the point I have already mentioned. I say that because in my judgment, the nature of the claimants' case is sufficiently clear. The documents referred to ought to have alerted the defendant, so it is alleged, to the fact that BAB and BBAB's willingness to provide or approve the use of resources for the expansion project was dependent on the provision of an unqualified audit report. If there are any doubts about the scope of the phrase " ... *there were limits to the extent* ..." or what the significance of the risk referred to was, that can be catered for by a narrowly focused request for further information and an equally narrowly focused response thereto. There is a balance to be struck, in my judgment, between causing further delay in progress in this claim by refusing permission for a relatively small amendment by reference to the absence of particularisation to which I have referred or giving permission, subject to the refinement I have referred to, and recognising that if additional information is required, that can be sought by a narrowly focused part 18 request. In my judgment, the latter will either cause no real delay or more limited delay than the former and for that reason, subject to the refinement to which I referred a moment ago, I will give permission to amend paragraph 50 as sought.

26. In the result, permission is refused in respect of the proposed inserted Section D(i), granted in relation to paragraph 46, and subject to the refinement point mentioned earlier, also in respect of paragraph 50. The amendment to the first two lines of paragraph 57.1 fall away with the proposed insertion of the new Section D(i). .