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QB-2021-002193

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/02/2024

Before :

SENIOR MASTER COOK

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Between :

VARIOUS CLAIMANTS	**Claimants**
- and -	
NISSAN MOTOR CO LTD AND OTHERS **VAUXHALL MOTORS LIMITED AND OTHERS** **STELLANTIS AUTO SAS AND OTHERS** **JAGUAR LAND ROVER AUTOMOTIVE PLC AND OTHERS** **VOLVO CAR CORPORATION AND OTHERS** **VOLKSWAGEN AG AND OTHERS**	**Defendants**

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ADAM KRAMER KC, JOANNA BUCKLEY and **ANNA DANNREUTHER** (instructed by **Pogust Goodhead, Leigh Day, Keller Postman UK Limited** and **Milberg London**) for the **Claimants**
LEIGH-ANN MULCAHY KC, CHARLOTTE TAN and **SOPHIA HURST** (instructed by **Cleary Gottlieb Steen & Hamilton**) for the **Vauxhall Defendants**
LEIGH-ANN MULCAHY KC, SIMON ATRILL KC and **MEGAN MCTAGUE** *(*instructed by **Kennedys**) for the **Peugeot-Citroen Defendants**
ANDREW KINNIER KC, JAMES WHITE and **LEE FINCH** (instructed by **CMS Cameron McKenna Nabarro Olswang LLP** and **Linklaters LLP**) for the **Jaguar Land Rover Defendants**

DOUGLAS PAINE, LEE FINCH and **IAIN MACDONALD** (instructed by **DLA Piper, Linklaters LLP** and **DWF Law LLP**) for the **Volvo Defendants**
PRASHANT POPAT KC, THOMAS EVANS and **GERAINT WEBB KC** (instructed by **Freshfields, Hogan Lovells** and **Hogan Lovells**) for the **Volkswagen Defendants**

Hearing dates: 17 and 18 January 2024

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Approved Judgment

This judgment was handed down remotely at 10.00am on 5th February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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SENIOR MASTER COOK

SENIOR MASTER COOK:

1. This hearing was convened by the Court to determine six outstanding Group Litigation Order ("GLO") applications in the NOx Emissions Group Litigation. It follows the NOx Emissions Group Litigation hearing before the President of the King's Bench Division, Mr Justice Constable, Mrs Justice Cockerill and myself on 8 December 2023 (the "December Pan-NOx Emissions Hearing") and the resulting Judgment ***Various Claimants v Mercedes-Benz Group AG & Others*** **[2023] EWHC 3173 (KB)** and Directions Order handed down on 8 and 11 December 2023 respectively.

2. At the December Pan-NOx Emissions Hearing the President of the King's Bench Division stated:

> "2. This Court is acutely aware that the potential costs involved are enormous and, without active case management, have the potential to become wholly disproportionate to the sums actually involved or in particular the sums (if any) ultimately recoverable by any individual claimant.
>
> 3. Finally, the Court has also to be mindful of the potential for these cases, were they each to be permitted to take their own course through the court system with no common management strategy, to place an unacceptable burden upon the Court's own time and resources and significantly to affect the ability of other litigants to have access to the civil justice system."

And later:

> "13. Before turning to the terms of the Order, I should make it clear that although each anticipated GLO application must be considered separately, I consider that such orders will be likely to be appropriate in this litigation as a matter of principle. I can also now approve the GLO in the Ford litigation. All existing GLO applications and any prospective GLO applications intended to be made by any party with an existing issued Claim Form(s) are to be heard at a three-day consolidated hearing before Senior Master Cook on 17th-19th January 2024, with the 14th and 15th February 2024 to be in reserve for additional time, if required."

3. The Court has already made GLO orders in the following cases:

   i) The Mercedes-Benz Emissions Litigation;

   ii) The BMW Emissions Litigation;

   iii) The Ford Emissions Litigation;

   iv) The FCA/Suzuki Emissions Litigation.

4. Between them, the six GLO applications comprise in the region of 480,000 claims. The causes of actions pursued are broadly similar to those described by me in the BMW Emissions Litigation GLO Judgment, ***Allsopp v BMW*** **[2023] EWHC 2710 (KB)** at §§8-14, save that; a competition claim only arises in the Volkswagen Emissions Litigation (as in Mercedes-Benz and BMW); claims are advanced against the manufacturer defendants in unlawful means conspiracy only in the Vauxhall claims; and there is no Consumer Credit Act 1974 claim in the Jaguar/Land Rover claims.

5. I have considered the following witness statements:

   i) Nissan-Renault: Gallagher 1, Snelling1, Chandler 1, and Gallagher 3.

   ii) Volkswagen-Porsche: Yamin1, Roberts1, and Winterburn 2.

   iii) Jaguar Land Rover: Holland 8.

   iv) Volvo: Burke 1, Burke 2, and Burke 3.

   v) Peugeot-Citroën: Croft 4, Croft 5, and Dobson 3.

   vi) Vauxhall-Opel: Oldnall 12, Brady-Banzet 6, and Oldnall 15.

6. It is clear to me that the parties have been mindful of the Court's direction, made at the December Pan-NOx Emissions Hearing, that the Court expects the parties to cooperate with the aim of ensuring that the costs incurred are proportionate and to reduce the burden placed upon the Court's time and resources. I have also previously indicated that, wherever possible, the terms of future GLOs should mirror those in the existing GLOs given that the claims are broadly similar and having regard to the time and resources already committed to considering and determining the scope of the existing GLOs.

7. Before me, the parties were agreed in principle that GLOs should be made in all six applications. The terms of the order in the Nissan-Renault Emissions Litigation were agreed by the parties. The terms of the order in the Jaguar Land Rover Emissions Litigation were agreed following the hearing and prior to this judgment.

8. In the circumstances, I will consider the disputed issues which are common to the remaining four GLO applications and those issues which are specific to individual manufacturers. I will do so by reference to the helpful list of issues which was prepared by counsel for use at the hearing.

Issue 1

9. This arises in the Volkswagen and Volvo Emissions Litigation and relates to the Group Register. The issue is whether the Group Register should include "*the Defendant(s) against which the Claimant brings Claims, and, in respect of each such Defendant, the causes of action pursued against that Defendant*".

10. On behalf of the Volkswagen Defendants, Mr Popat KC submitted that provision of this information at the outset is a matter of fundamental fairness. Each Defendant is entitled to know, and has an obvious commercial interest in knowing, the numbers

and the identities of the Claimants who are bringing claims against it, and the causes of action which it will have to meet in respect of each claim. Such basic information is plainly of importance to companies facing litigation and potentially significant liabilities.

11. He drew the Court's attention to ***Alame & Others v Royal Dutch Shell Plc & Another*** **[2022] EWHC 989 (TCC)** where O'Farrell J stated:

> "Group litigation cases may differ from other Part 7 or Part 8 claims in that the claim form and the group statement of case on common issues may plead the claim in short or general terms. However, that does not exempt each claimant from the requirement to set out in a schedule to the group statement of case, or in a questionnaire or other pleading in the group register, the facts necessary for the purpose of formulating a complete cause of action."

12. Mr Popat KC made the point that certainty as to which claims are being pursued against whom is all the more important in group litigation where the total number of claims in a group may be vast, but the subset pursuing a particular entity, or a particular cause of action, may be low. Further, it is only once such information is received that a Defendant can properly investigate the individual claim against it. He referred to the position of the Finance Defendants and Authorised Dealership Defendants described in Roberts 1 at §24, as such entities may face hundreds of claims or a single claim. They cannot readily identify from the Group Register whether a Claimant even acquired a vehicle from them, and it would not be practical or proportionate for them to review all, possibly 132,000, entries to try to work out which might be applicable to them. Even if such an exercise could be done, it would not be conclusive, as ultimately it is for the Claimants to decide whether they wish to pursue a cause of action. And, following investigation, it may be clear that, for example, the wrong Authorised Dealership has been sued or that the cause of action advanced against the Defendant being sued cannot be maintained. He suggested the fact that the claims may be stayed was a further reason why the information sought should be provided now, as the Defendants may have a potentially significant number of unclarified claims hanging over their heads for a long period.

13. Mr Popat KC then moved to issues concerning limitation. He referred to Lord Woolf's remarks concerning the relationship between the Claim Form and the Group Register in the case of ***Boake Allen Limited and others v Her Majesty's Revenue and Customs*** **[2007] UKHL 25:**

> "[32] Before a GLO can be made it is necessary for each individual potential member who wishes to join the GLO to make an individual claim under CPR Part 7 or Part 8. This in conjunction with the application to register enables the court to determine whether the respective litigants qualify to be a member of the GLO. It also prevents time continuing to run for purposes of limitation of actions. None the less the claim once made will usually almost immediately be of only limited historic interest because what matters is the application to

> register and the register of the GLO on which all proceedings subject to the GLO are registered…
>
> [33]…In the context of a GLO, a claim form need be no more than the simplest of documents. It needs to be read together with the application to register and the register bearing in mind its place in the GLO process and the need to limit pre-registration costs so far as this is possible. In this case the suggested deficiency in the claim forms are that they did not sufficiently identify the basis for the revenue being under an obligation to repay the tax paid assuming this should not have been claimed by the revenue."

14. Mr Popat KC pointed out that Lord Woolf's remarks, although obiter in nature, had been approved by Henderson J in ***Europcar UK Limited & Others v The Commissioners for HM Revenue and Customs*** **[2008] EWHC 1363 (Ch)**:

> "Furthermore, I have no doubt that Lord Woolf was right when he said in paragraph 33 that in the context of a GLO a claim form "need be no more than the simplest of documents", and that for limitation purposes "the individual claims should be construed in conjunction with the applications for the claims to be registered and, from the time of registration, the register"."

15. Mr Popat KC criticised the Claimants for having issued Claim Forms without indicating the individual causes of action relied upon in circumstances where the Claim Forms would have to be read with the Group Register entries. He submitted that the defects in the Claim Forms will not be 'cured' if the Group Register does not contain the individual causes of action.

16. The Claimants had offered to provide the information relating to the causes of action pursued by individual Claimants in the Schedules of Information (SOIs) which, it had been accepted, would not be provided until a later date to be determined by the Managing Judges. Mr Popat KC submitted that the Claimants cannot have it both ways by seeking to reap a benefit in terms of limitation before they have decided which claims they wish to pursue (or, for those Claimants who have decided, whilst keeping the Defendants in the dark). If they are permitted to defer making an election concerning their causes of action, they will obtain a manifestly unfair advantage, in that they may choose their claims, and the targets of those claims, long after, on any view, limitation will have expired. This will be contrary to the usual position on amendments after limitation has expired, which are subject to strict tests under CPR r19.6. Alternatively, and putting the point at its lowest, there is a real danger for the Claimants that in years to come they may find that it is too late for them to adopt causes of action if they have chosen not to do so on their Claim Forms, and have resisted providing the relevant information in the Group Register.

17. Mr Popat KC submitted that there were good case management reasons for the causes of action to be identified in the Group Register because the Court will need to know, at least in broad terms, the numbers (or relative percentages) of claims being faced by each Defendant as well as the numbers of Claimants pursuing each cause of action.

18. Lastly, Mr Popat KC submitted that the failure to particularise causes of action at the outset will have consequences in terms of common costs. If it were assumed against all Claimants that, because they were named on Claim Forms which pleaded all causes of action, they were pursuing all causes of action against all named Defendants, this may mean that a Claimant will be held liable for the common costs of a cause of action which fails even if he or she: (a) had no intention of pursuing such a claim, but had failed to communicate that decision; or (b) would have decided against that cause of action had they turned their mind to it. The alternative assumption, namely that no Claimant has brought a valid claim against any Defendant, may have very different, but significant implications, not least in terms of limitation. Further, he pointed out that if a cause of action fails before the Claimants have stated their causes of action, no Claimant properly advised would at that stage elect to pursue a (dismissed) cause of action. To do so would expose them to a costs liability which they could otherwise – and tactically – attempt to avoid. As such, the Defendants may face the argument that, even if they are entitled in principle to the common costs of a cause of action, there are no Claimants with a pro rata several share of the liability for such costs.

19. Mr Webb KC on behalf of the Porsche Defendants adopted the submissions of Mr Popat KC. He maintained that the suggestion, contained in Winterburn 2, that the information would take a long time to collate didn't bear scrutiny. The required information was set out in the Group Register for the GLO in the first Volkswagen litigation. He submitted the information is cheap and easy to obtain and should be provided as a matter of procedural fairness.

20. Mr Paine, on behalf of the Volvo Defendants, accepted that as Claim Forms had yet to be served on his clients, they had indicated that the information relating to causes of action should be part of the SOIs, however this was before the December Pan NOx Hearing. Volvo accepts that providing full SOIs will be expensive and that the cost is not justified at this stage. However, he maintained that a means is now required for this limited information to be provided. In the circumstances, such an order would be appropriate and just.

21. On behalf of the Claimants, Mr Kramer KC started from the position that if SOIs were produced, the Defendants would not need the information they have requested. If the Defendants really need this information now, then a mechanism for the production of SOIs would be agreed. However, he questioned whether these Defendants really required this information now when others were content to have the information provided at a later time when SOIs are ordered.

22. Mr Kramer KC referred to Winterburn 2 §§17 to 25 and §§34 to 36 to make the following points:

    i) To confirm that a Claimant is pursuing a particular Authorised Dealership (and therefore that the Claimant is pursuing a particular Defendant under contractual causes of action) is not straightforward and requires a costly review, document analysis and back-and-forth to ascertain the status of the entity (often all that is stated is a trading name of some sort) and whether it is (or was) in fact an Authorised Dealership Defendant. The task of identifying the correct counterparty is therefore often difficult.

ii) Even when the required documentation is provided in a legible format by the client and reviewed by a fee earner (and there may be some back and forth to obtain that), it is not always possible to identify the correct legal entity without further investigation.

iii) There are almost 200 Authorised Dealer Defendants in this litigation, and it is unknown to the Claimants whether there are any further dealership entities which are authorised in the absence of the Defendants providing a complete list of the same. This is why the Claimants seek the 'Authorised Dealerships' information at Section P of the GLO, so the underlying Defendant is more readily identifiable.

iv) Once the correct counter-party has been identified, the Claimants' solicitors then need to consider whether a claim would face a limitation issue. The relevant date for commencement of the limitation period will depend on the cause of action in question, and the nature of the agreement by which the vehicle was acquired and when relevant payments were made. If the paperwork is missing, working out precisely when the vehicle was delivered, or contract was formed, or any other relevant date, can require investigation. The more common situation is that the vehicle was acquired under some form of finance agreement, in which case the relevant limitation period is likely to commence when the last payment under the agreement was made.

v) Based on their experience (in particular on VW1) and the size of the litigation, the Claimant firms anticipate that the costs would amount to millions of pounds, even if it only takes 15 or 20 minutes to take instructions in relation to or consider each vehicle (and often it will take more). If this exercise were undertaken at the SOI stage, the additional costs would be comparatively minimal, because confirming the causes of action and Defendants would be a natural consequence of providing the answers on the SOIs (which go into some detail on the relevant contracts).

23. In the circumstances Mr Kramer KC submitted that the significant costs of providing the information at the Group Register stage are not outweighed by any marginal benefits of having the information now. He suggested that in any event, the Claimants strongly suspect that the Authorised Dealerships will be indemnified by the Manufacturers and that the Defendants have certainly never indicated otherwise, and they are all represented by the same firms.

24. Mr Kramer KC pointed out that the Defendants do have the vehicle VINs which will give them a great deal of information. He made the point that the Authorised Dealerships will have their own records and more specifically would be able to estimate their likely liability by reference to the specific vehicles set out in the Group Register if they wished to do so.

25. Mr Kramer KC suggested that it should be assumed, if necessary, that all claims were made against all Defendants until the provision of SOIs.

Decision

26. I have concluded that Mr Kramer KC's submissions should be preferred. I have previously indicated that if I were to start with a blank sheet of paper and with only one case it might be sensible to adopt a different approach. However, I must consider this litigation as a whole and the Defendants' proposals must be seen against that background.

27. It is unlikely that these claims will proceed as lead GLOs. In the circumstances, I am satisfied that the Defendants' proposals would mean that very substantial costs would be incurred at this point on an issue which is far from central to the issues which are actively being progressed in the context of the Lead and Additional Lead GLOs.

28. Mr Kramer KC accepted that until the provision of SOIs it must be assumed that all claims are made against all Defendants. He was also right to observe that the Court retains a discretion in relation to costs which will be exercised in the appropriate manner to reflect any set of circumstances which might arise.

29. Given the Defendants already have the VINs relating to each of the Claimants' vehicles I am not persuaded they are prejudiced by waiting until SOIs are ordered. I also note the Claimants offer to provide complete SOIs if the Defendants were to request them.

30. In the circumstances it is neither proportionate nor necessary for this information to be provided in the manner proposed at this stage of the proceedings. CPR r.19 and PD 19B collectively define the function of the Group Register and provide that it will contain such details as the Court may direct. The information required by the Court will vary depending on the particular complexities and progress of any given set of litigation.

Issues 3 and 9

31. These arise in the Volvo and Peugeot-Citroën Litigation and relate to the definition of "Lead Claim" in the Group Register. The issue is "Should the definition of "Lead Claim" include '*Nothing in this order is intended to determine at this stage that there will or should be selection of Lead Claims, which is a matter for determination at the "appropriate time".'*.

32. On behalf of the Volvo Defendants Mr Paine submitted that the draft GLO contained various provisions relating to "*Lead Claims."* In circumstances where further directions were likely to be made in respect of the NOx litigation generally and that it was entirely possible that there may be no "*Lead Claims"* in the Volvo Litigation. He submitted that it was right that the order should make clear it is not pre-judging the case management of the claims.

33. Mr Kramer KC submitted the provision was unnecessary.

Decision

34. I agree the provision is unnecessary. The matter of the choice of Lead Claims is for the managing Judges. In the circumstances I consider the order should not be unnecessarily lengthened by the inclusion of unnecessary wording.

Issues 4 (1), 11 (2) and 18.

35. These arise in the Volvo, Peugeot-Citroën and Vauxhall Litigation. The issue is whether the Group Register should include "*the date of acquisition of each vehicle in respect of which a claim is made."*

36. On behalf of the Vauxhall and Peugeot-Citroën Defendants, Ms Mulcahy KC submitted that her clients maintained that a very large proportion of the Claimants' claims are time-barred. She pointed out that in the jurisdiction application made by the First and Second Defendants, the Claimants themselves accepted for the purposes of the jurisdiction challenges that up to half of the claims could be *prima facie* time-barred.

37. Ms Mulcahy KC emphasised that the Court had already recognised the importance of the limitation defence. Firstly, in Senior Master Fontaine's finding, in the context of the First and Second Defendants' jurisdiction application, that the Claimants' failure to disclose limitation issues when seeking permission to serve out constituted a material non-disclosure and breach of the duty to the Court to make full and frank disclosure on an *ex parte* application, see ***Wragg v Opel Automotive GmbH and others*** **[2023] EWHC 2632 (KB)**. Secondly, in the "Pan-NOx Order" dated 11 December 2023 (paragraph 11(3)), the Court has ordered the parties to consider whether, and if so how, limitation issues can be tried on a common basis in October 2024, reflecting the Court's recognition of limitation as a potentially determinative issue that could dispose of significant numbers of claims.

38. In the circumstances Ms Mulcahy KC submitted that provision of the dates of acquisition at this stage is desirable as it would allow the parties to identify which claims are affected by limitation issues. This in turn will enable proper consideration of how limitation can be approached as a common issue, and also give clarity as to the number of claims affected.

39. On behalf of the Volvo Defendants, Mr Paine adopted Ms Mulcahy KC's submissions. He submitted that there were special concerns on limitation in the Volvo litigation and that providing this information would not require any significant additional investigation. If the information was not already held, it would, he suggested, be a simple matter of asking Claimants for the date. The Claimant firms would not be required to verify the dates provided by the Claimants. Claimants would not need to be asked for any documents, and if they could give only an estimated date, that would be sufficient for the Group Register. The information could be verified at the time of SOIs as necessary.

40. On behalf of the Claimants Mr Kramer KC made the point that this information was not ordered in any of the GLOs made to date, nor is it sought by any of the Defendants in the other three of the six GLO applications. His submissions recorded at paragraphs 22 to 24 above also had application here.

41. Referring to the evidence in Brady-Banzet 6, Mr Kramer KC pointed out that the Claimants' lawyers do not hold the information. The Defendants' view of the Claimants' application, that it "*is a basic piece of information that will be available to the Claimants and their solicitors,*" was wrong. He referred to Croft 5 where it was explained that the information was requested but was not always given on sign-up, and it requires verification and further follow up with Claimants to obtain the accurate information. It is not always clear from the documentation (if the Claimants have it to

hand, and if they can understand it) what the correct date is. The work of working out what is the true date comes later.

42. In short Mr Kramer KC submitted the information would be very expensive to obtain now through a 'SOI-lite' process. It should be gathered as part of the SOI process as information about the claim, not the identification of the claim (the true purpose of the Group Register). As pointed out in Croft 5 it is a fact-sensitive exercise to be carried out at the appropriate juncture. Moreover, to include it in the Group Register encourages satellite litigation through the Notice of Objection process.

43. Lastly, Mr Kramer KC pointed out that the same evidence established that if this information were ordered to be provided in the Group Register, then the Claimants would need very substantially more time to complete the Group Register.

Decision

44. I am satisfied that the production of this information should wait until the production of SOIs largely, for the same reasons as I gave for Issue 1. I have no doubt that the information could be provided by the Claimants now, but that would result in an unnecessarily high level of costs being incurred for the reasons outlined by Mr Kramer KC.

45. I have no doubt that the Claimant firms have an interest in identifying claims which are either duplicated or barred by limitation issues and have processes in place to identify them. I am not persuaded that the Defendants are placed at any procedural disadvantage given the overall progress of the NOx litigation and the fact that these claims will not be Lead GLOs.

Issues 5, 12 (i) and 19 (i).

46. These arise in the Volvo, Peugeot-Citroën and Vauxhall Litigation. The issue is whether the GLO should contain a Standard Minimum Requirement that the Claimant has not commenced proceedings in any other jurisdiction in respect of the subject vehicle.

47. On behalf of the Defendants, Ms Mulcahy KC submitted this requirement was necessary because some Claimants have also issued proceedings in Scotland. She referred to Brady-Banzet 6 at §§51 to 60 and made the point that there would appear to be some Scottish Claimants who had also commenced proceedings in England.

48. Ms Mulcahy KC pointed out that it is an obvious abuse of process for a Claimant to bring the same claims in different jurisdictions. She suggested that this was a matter for the Claimants and their lawyers to investigate and address. She maintained the Defendants should not be put to the burden of litigating the same issues with the same Claimants in multiple jurisdictions. Where a Claimant has chosen to instigate multiple claims, they should be put to their election about which claim to pursue, and they should not be permitted to join an English group action when they are already admitted to a group action in Scotland. Those Claimants should instead discontinue their duplicative claims. In the circumstances she invited the Court to impose as a Standard Minimum Requirement that the Claimant is not pursuing a claim about the same vehicle in another jurisdiction.

49. Mr Kramer KC opposed this requirement. He referred to Croft 5 §53 and Oldnall 15 §§45-7 and submitted that the evidence shows the Claimants agree that claims should not be pursued in more than one jurisdiction in relation to the same complaints on the same vehicles and accept that issues of abuse can arise. He informed me that the Claimants will attempt to and have attempted to avoid such duplication where possible, and will respond to any such duplication identified by Defendants. In the circumstances there was much common ground between the parties. However, he suggested that these issues, which do not occur commonly, can be dealt with in correspondence or by strike out and on a case-by-case basis. Standard Minimum Requirements is not an appropriate way of policing the situation of multiple claims. They set eligibility conditions precedent to participation based on subject matter and should not be a method of resolving competing claims in different jurisdictions.

Decision

50. In my judgment this wording is not required. I accept Mr Kramer KC's submission that these jurisdictional issues will be rare and that they can be adequately addressed by the parties. Including this wording also produces an unnecessary divergence from the GLO wording in all the other claims.

Issues 7 and 8.

51. These issues arise in the Volvo Litigation. Issue 7 relates to the cut-off dates for service of the issued Claim Forms and entry onto the Group Register. Issue 8 relates to the GLO issues and is whether the question of the prohibition of any alleged defeat device under Article 5(2) of the Emissions Regulation be included as part of issue 1.

52. The Claimants propose service of the Claim Form by 21 November 2024 and entry onto the Group Register by 18 February 2025. The Defendants propose service of the Claim Form by 17 August 2024 and entry onto the Group Register on the first date on which the Register is updated, being 8 November 2024.

53. Mr Paine submitted that the Claimants' proposals for service of the Claim Form and entry onto the Group Register were excessive and that seven months was more than sufficient. He pointed out that seven months was the period allowed in the BMW and FCA GLOs.

54. Ms Buckley pointed out the Claimants have proposed dates which are only 3 months later than those proposed by the Defendants. The Defendants have refused to agree to those dates but have provided no good reason for doing so, particularly in circumstances where neither the Claimants nor the Defendants have proposed that the Volvo GLO would be an Additional Lead GLO.

55. Ms Buckley referred to Burke 2 §§20-25 where it was stated that the purpose of the cut-off date is to afford potential Claimants a reasonable period of time in which to participate in the litigation after the GLO has been made and publicised. She referred to the purpose of the cut-off date as described in **Class Actions in England and Wales 2nd Ed** at **3-078**:

> "The cut-off date has a number of purposes. It is intended to encourage parties to join the GLO proceedings in a timely way

> to maximise the advantages of the GLO procedure. The cut-off date is also intended to provide certainty for all parties as to the size, scope and quantum of the group proceedings. Moreover, between the date proceedings are issued and the cut-off date, the group litigation will generally progress in the usual way with parties exchanging pleadings, a CMC being held and the parties giving disclosure. For this reason, in the RBS Rights Issue Litigation, Hildyard J also noted that the cut-off date was intended to indicate the last date at which it was feasible to expect late joiners to catch up with the steps already taken in the proceedings."

56. Ms Buckley referred to the experience of the Claimant firms, noting they consider that additional Claimants will come forward following publication of the GLO and further marketing. The cut-off date would not prevent those potential Claimants bringing a claim but merely result either in (i) those claims being pursued separately to the Volvo NOx Emissions Litigation or (ii) applications for those Claimants to join the Volvo NOx Emissions Litigation after the cut-off date. This, she submitted, would be undesirable, inefficient and result in unnecessary costs.

57. Mr Paine contended that the Claimants' proposed wording of GLO issue 1 was difficult to understand. The Claimants propose that the first part of Issue 1 should be limited, in essence, to whether the Subject Vehicles contained one or more defeat devices. They propose this should be followed by the wording: "The remaining issues in this section only arise to the extent that any of the Subject Vehicles are found to have contained a defeat device". He submitted the remaining issues only arise if and to the extent that (i) the Subject Vehicles contained one or more defeat devices and (ii) those defeat device(s) were prohibited by Article 5(2) of the Emissions Regulation. If defeat device(s) were permitted, there can be no liability.

58. Mr Paine also submitted that the Claimants are also incorrect to assert that "all other GLOs which have been ordered in the NOx Emissions cases have separated out" the two issues. He pointed out that the Volvo Defendants' proposed wording is almost identical to what was ordered in the Ford GLO ("Whether at all material times the Subject Vehicles contained one or more element[s] of design which amounted to a defeat device within the meaning of Article 3(10) of Regulation 2007/715 (the "Emissions Regulation") and which was prohibited by Article 5(2) of the same Regulation (a "prohibited defeat device" or "PDD")"). The Ford GLO also does not include the 'gateway' wording favoured by the Claimants ("The remaining issues in this section only arise" etc).

59. In the spirit of compromise Mr Paine put forward a form of wording acceptable to Volvo:

> "1) **Presence of defeat devices**: Whether at any material time each or any of the Subject Vehicles contained one or more element[s] of design which amounted to a defeat device within the meaning of Article 3(10) of Regulation 2007/715 (the "Emissions Regulation").

> **Justification**: If the Subject Vehicles, or any of them, did contain such defeat devices, whether those defeat devices were or are not prohibited by Article 5(2) of the Emissions Regulation (a "prohibited defeat device" or "PDD").
>
> The remaining issues in this section only arise to the extent that any of the Subject Vehicles are found to have contained a PDD."

60. Ms Buckley submitted that the Defendants' proposed amendment is to elide Issues 1 and 2 of the GLO, with the effect that the separate and distinct issues of (i) whether the relevant vehicles contained defeat devices for the purposes of Article 3(10) of the Emissions Regulation (the "presence of defeat devices"); and if so (ii) whether those defeat devices were or are not prohibited by Article 5(2) of the Emissions Regulation ("justification") would be considered as one combined issue. The Claimants propose considering the presence of defeat devices and justification as two separate (Issues 1 and 2), as follows:

> "(1) **Presence of defeat devices**: Whether at any material time each or any of the Subject Vehicles contained one or more element[s] of design which amounted to a defeat device within the meaning of Article 3(10) of Regulation 2007/715 (the "Emissions Regulation").
>
> The remaining issues in this section only arise to the extent that any of the Subject Vehicles are found to have contained a defeat device.
>
> (2) **Justification:** If the Subject Vehicles, or any of them, did contain such defeat devices, whether those defeat devices were or are not prohibited by Article 5(2) of the Emissions Regulation."

61. Ms Buckley submitted that this approach was logical and consistent with that adopted in the Mercedes-Benz, BMW, Ford and FCA GLOs, which list (i) the presence of defeat devices and (ii) justification as separate GLO Issues.

Decision

62. I consider the Claimants' approach to cut-off dates to be preferable. I do not find reference to other cases helpful. Each case is different both in relation to the progress which has been made to date and the speed at which Claimants are signing up to the claim. I should give considerable weight to the experience of the Claimants' solicitors in this regard.

63. As far as the formation of GLO Issue 1 is concerned, I am of the view that it is critical that the GLO Issues are consistent between the cases in the NOx Group Emissions Litigation so that rulings in relation to common issues of principle are as dispositive as possible across the NOx Emissions Group Litigation, in accordance with the Court's directions as to the appropriate manner in which to case manage these cases as set out in the Pan-NOx Order. I agree with Ms Buckley that immaterial

tweaks should be avoided as they can only lead to argument to the effect that there is no carry over from the Lead GLOs. Material changes should be avoided unless there is some specific reason arising out of the particular features of the GLO being considered.

Issue 10 (ii) (ii).

64. This issue arises in the Peugeot-Citroën litigation. The issue relates to the wording of paragraph 23 of the proposed GLO which relates to substituted service. The Claimants sought to add a new paragraph 23 to the draft order so that the relevant provisions would now provide:

> "22. Any Claim Forms which were issued on or before 17 January 2024 shall be served:
>
> a. On the Fourth to Eighth Defendants and the Authorised Dealership Defendants by 4pm on 19 May 2024
>
> b. On the First to Third Defendants, and the Ninth Defendant by 4pm not before 19 June and not later than 19 July 2024
>
> 23. Service on the First to Ninth Defendants and those Authorised Dealership Defendants that are represented by Kennedys Law LLP shall be effected in accordance with paragraph 22 above by e-mail to PCDFFeeEarners@Kennedys.com
>
> 24. The French Defendants shall file an Acknowledgement of service within 21 days of the service of the claim form."

65. On behalf of the Defendants Ms Mulcahy KC told me that the issue had arisen late in the day as the previous draft order being discussed between the parties did not contain any provision for service of the claim forms. She made the point that if service of the claim form was to take place this would trigger at least one application under CPR Part 11 by the French Defendants disputing jurisdiction. She took me to correspondence dated 9 January 2024 in which Kennedys made clear, on behalf of the French Defendants that they did not accept jurisdiction.

66. Ms Mulcahy KC drew my attention to the fact that similar issues of jurisdiction were being appealed in the Vauxhall-Opel Litigation and she wished to reserve her client's position on this until after the disposal of the appeal. Given the late point at which the issue had been raised there had been insufficient time for her clients to resolve the issue and consequently she did not have instructions to consent to the proposals to serve the French Defendants by an alternative method namely by e-mail on their English Solicitors, Kennedys.

67. Mr Kramer KC pointed out that these issues were always going to be in play at this hearing, which was why the French Defendants had agreed to appear at the hearing subject to undertakings which were given so as not to prejudice their position on jurisdiction.

68. Mr Kramer referred to the well-known delays in the operation of the Foreign Process Department and pointed out that all the provision at paragraph 23 does is to say that if by end of June there is no agreement between the parties as to service the Claimants will not have to rely upon the Foreign Process Department to achieve service in accordance with paragraph 22 (b) of the proposed GLO. In other words if it is accepted that paragraph 22(b) will apply, you have to have paragraph 23.

Decision

69. In my judgment there are very good reasons why the Claim Forms should be served sooner rather than later. That is the entire point of paragraph 22 of the proposed GLO order.

70. The difficulties caused by the stance of the German Defendants in the Opel litigation ***Wragg and others v Opel Automobile GmbH and others*** **[2023] EWHC 2632 KB** are well known and were described by Senior Master Fontaine at paragraph 81 of her judgment:

> "81. Although it is clear that a foreign defendant is entitled to insist on service of judicial documents in the country of their domicile/residence, (see *SodaStream* at [50(9)] and *SMO v Tik Tok* at [77]), the German Defendants were particularly and unnecessarily un-cooperative in this regard, in my judgment namely:
>
> i) Despite having instructed English solicitors, taking over 4 months to respond to the letter of claim and either disregarding or failing to give early and clear answers to the Claimant firms' requests for agreement to service on the German Defendants' London solicitors, nor any reasons why this would not be agreed.
>
> ii) Declining to agree to a request for service by a method included in Art 5 of The Hague Service Convention, namely "informal delivery" as explained in Oldnall 10 at §§25, 29, 35-37 and Oldnall 13 at §36, and their refusal to even confirm whether they would accept the documents for service if delivered by this method (which requires the agreement of the recipient): Oldnall 10 at §§35-37, 39-40; Oldnall 13 at §36.
>
> iii) The fact that the exercise of submitting requests for service via the Hague Convention in numerous claims each requiring the inclusion of thousands of pages of translated and untranslated documents in duplicate, which had already been provided to the German Defendants' London solicitors, greatly increased the costs of this exercise, far more than would be the case in a unitary action.
>
> iv) The delay in notifying the Claimants whether there would be a challenge to jurisdiction. The German Defendants had been aware of this claim since Leigh Day's letter before action

> dated 1 April 2021 but have never formally notified the Claimants that there would not be a *forum non conveniens* challenge to the jurisdiction of this court. "

71. Many of her concerns would apply in this case. I am entirely satisfied on the basis of the information before me in this claim and from my experience in managing these claims that there is a good reason to order service by e-mail on the French Defendants in the manner proposed by the Claimants. Thereafter it cannot be beyond the ability of the parties to reach an appropriate agreement to ensure the position of the French Defendants on jurisdiction is preserved.

Issue 11 (i)

72. This issue arises in the Peugeot-Citroën Litigation. It relates to the time period permitted in the Group Register for the Claimants to respond to any Notices of Objection at paragraph 31 of the proposed GLO. The Claimants proposed a period of 56 days' notice, the Defendants proposed a period of 21 days.

73. Ms Mulcahy KC submitted that 21 days was sufficient for this task to be completed, it is the same as the Fiat Chrysler GLO.

74. Ms Buckley submitted that the 56 days proposed by the Claimants was more realistic given the overall burden on the Claimants' solicitors. Moreover, she pointed out the period of 56 days was more in the line with the majority of existing GLOs see for example Mercedes and BMW.

Decision

75. In my judgment 56 days would be the appropriate period. The Defendants have not provided any good reason for imposing the shorter time period of 21 days. It is essential that such time limits take into account the practicalities of conducting such complex large-scale litigation.

Issues 12 (ii) and 19 (ii)

76. This issue arises in the Peugeot-Citroën and Vauxhall Litigation. The issue is whether the GLO should contain a Standard Minimum Requirement that the Claimant has in place ATE, either individually or together with other Claimants, on terms satisfactory to the Defendants or the Court.

77. On behalf of the Defendants Ms Mulcahy KC started from what she regarded as a concession made by Mr de la Mare KC in the course of the December Pan-NOx hearing on 8 December 2023 where the transcript records:

> "the position in relation to ATE is regulated by the grant or not of the Group Litigation Order. It is a condition precedent effectively that you have ATE incepted or on the point of inception. Obviously the adequacy of the ATE at that stage is carefully considered by the court given the parameters of the litigation"

78. Ms Mulcahy KC also referred to Milberg's letter of 8 January 2024 where they state:

> "the viability of a group action (which includes the Claimants' ability to satisfy adverse costs orders) is a separate consideration for the Court when deciding whether to grant the GLO."

79. Ms Mulcahy KC submitted that this was consistent with the authorities of ***Hobson v Ashton Morton Slack*** **[2006] EWHC 1134 (QB)** and ***Austin v Miller Argent (South Wales) Ltd*** **[2011] EWCA Civ 928; [2011] Env. LR 32**. In the case of ***Hobson*** Sir Michael Turner refused to make a GLO because of the "lack of any certainty about the sufficiency of the ATE insurance in terms of amount of cover and its enforceability". In the same judgment, he referred to the "put[ting] in place" of ATE insurance as "a condition precedent to the success of this application". In the case of ***Austin*** Jackson LJ held that "the court will not make a GLO before it is clear that there is a sufficient number of claimants, who seriously intend to proceed" and that "it was not clear that there was a sufficient number of claimants who seriously intended to proceed" because "ATE insurance had not been obtained".

80. Ms Mulcahy KC submitted that the reasons for requiring such insurance were clear and that the Court should not lend its assistance to group litigation and endorse advertising for new claimants to join the litigation, in circumstances where Defendants are exposed to the risk that they will be unable to recover their costs in some way if they are successful. She suggested that would amount to encouragement of oppressive litigation especially in circumstances where it is clear the Claimants have been told that they have no personal liability for costs and that such insurance would be arranged.

81. Ms Mulcahy KC made the point that ATE insurance is also important to the viability of the litigation. Claimants who are not protected by such insurance would be able to abandon the litigation once it becomes clear that their claims will fail, with the consequent prejudice to Defendants, disruption to the litigation if it continues, and waste the Court's time if the claims are discontinued.

82. Ms Mulcahy KC then conducted a detailed examination of the current state of the Claimants' ATE insurance arrangements. The detail is derived from Brady-Banzet 6, § 73 and correspondence between the parties carried out on 8 and 9 January 2024. I do not intend to lengthen this judgment by repeating it, it is set out at paragraph 13 of her skeleton argument for the Vauxhall Defendants and paragraph 6 of her skeleton argument for the Peugeot-Citroën Defendants.

83. Ms Mulcahy KC submitted that in order to meet these concerns the Defendants seek a requirement that, for a claim to be included on the Group Register, adequate ATE insurance must be in place with adequacy to be determined by the Court if not agreed between the parties. She submitted that an ATE policy would be adequate if:

    i) It is with an established insurer with a strong credit rating;

    ii) It is dedicated to protecting the adverse costs risks in these proceedings. Policies where the Claimants might themselves exhaust the available indemnity to pay their own disbursements are not, in the Defendants' view, adequate. Policies that are split over multiple proceedings against different car manufacturers are also not adequate;

iii) The insurer provides either an anti-avoidance endorsement or a direct indemnity to the Defendants. These are standard terms of ATE insurance policies, and an ATE insurer will expect to provide either an anti-avoidance endorsement or a direct indemnity if required to do so; and

iv) The cover includes costs incurred before inception of the policy, (including in relation to the costs liability of discontinuing claimants).

84. Ms Mulcahy KC was prepared to concede that a detailed analysis of the ATE policies may be better conducted at the costs management hearing that has been ordered in the Pan-NOx Order as part of the 11-15 March Hearing. At this stage she asked the Court to ensure that a Standard Minimum Requirement that an adequate ATE insurance is in place that is sufficient to protect their position and provides a basis for the parties to discuss the ATE arrangements that are in place and how they should be modified to properly protect the Defendants.

85. Mr Kramer KC took issue with Ms Mulcahy KC's starting point. He did not accept that any such concession had been made or that there was any established principle of law that ATE insurance was a condition precedent to a Court making a GLO. He submitted that the existence of ATE insurance was one of a number of factors which the Court was required to weigh before making a GLO. He pointed out the presence of ATE was one of seven factors considered as part of the discretion exercised by Turner J in the case of ***Hobson***. The main factor considered by the Judge was whether there were common issues of fact or law, in accordance with CPR r.19.21. In any event this was a very different case, where £25,000 total compensation was being pursued, in circumstances where £1 million in costs had been incurred by the time of the GLO application. This was described by the Judge as an "obvious and grotesque imbalance". ***Hobson*** can therefore be confined to its facts.

86. Mr Kramer KC pointed out that the issue for the Court in the case of ***Austin*** was whether there were enough claimants who were seriously intending to proceed. He fully accepted that the presence or otherwise of ATE could be relevant to this issue. However there could be no doubt the NOx Claimants were seriously intending to proceed given the number of potential claimants and the steps already taken in relation to the NOx claims generally.

87. Mr Kramer KC submitted that where a serious intention to proceed is demonstrated, the case will proceed subject to any strike out or security for costs application, and the question for the court becomes merely whether it is more appropriate that it proceeds by way of GLO.

88. Further and in any event, Mr Kramer KC submitted that the Claimants have shown that they have substantial ATE cover which has been incepted. The position at present is that there is currently in the region of £7 million of ATE cover for the opponents' costs shared between the Leigh Day Claimants, the Johnson Law Group Claimants and the Pogust Goodhead Claimants. To the extent there are particular genuine concerns with the terms or amount of the policies, they can be dealt with on an application for security for costs or at the costs hearings, probably in February or May 2024, but prima facie there can be no suggestion that £7 million is not adequate security for the Peugeot-Citroën Defendants, especially if this is not a Lead Claim.

Decision

89. I do not accept Ms Mulcahy KC's submission that ATE is a condition precedent for making a GLO. Nor do I accept that Mr de la Mare KC in any way conceded the point, or if he did, that any such concession made in different circumstances is binding on me. In my judgment the law is correctly stated by the authors of **Class Actions in England and Wales 2nd Ed at 3-026**:

> "As part of its discretion in deciding whether or not to make a GLO, the court will consider the claimants' ability to fund the litigation through to a conclusion and to meet any order for payment of adverse costs, for example by way of an ATE insurance policy.
>
> Although ATE insurance has been described as a "condition precedent" to the success of an application for a GLO, courts generally consider the existence or otherwise of ATE insurance as one of a broad range of factors in exercising its discretion.
>
> Courts have generally been willing to make GLOs where the threshold requirements are satisfied and a GLO is considered the most convenient way to manage the claims before the court, regardless of whether ATE insurance has been obtained.
>
> On the other hand, where a court has concerns about the appropriateness of granting a GLO, the absence of ATE insurance and uncertainties as to the nature of funding may weigh heavily against granting a GLO."

90. In my view it is beyond argument that the threshold requirements for making a GLO are met here, particularly given the clearly expressed view of the President of the King's Bench Division set out at paragraph 2 of this judgment above.

91. I am in any event satisfied that the evidence before me demonstrates that the Claimants have substantial ATE in place or on the point of inception and that the proper context to take any points in relation to the adequacy of their funding arrangements would be an application for security for costs made at a point, when it is known with greater certainty, what the future costs would look like. This is also consistent with the approach I took in the Fiat Chrysler application for a GLO.

Issue 16.

92. This issue arises in the Vauxhall Litigation. It relates to the composition of the Steering Committee.

93. On behalf of the Defendants, Ms Mulcahy KC made the point that the Defendants do not agree to the concept of a "Steering Committee" because the three-tier organisational structure proposed is convoluted and will simply generate unnecessary costs and effort in cascading information up and down the different layers and on the Claimants' proposal only Johnson Law Group would sit outside the Steering

Committee. In the circumstances, the Lead Solicitors and the Claimants' Solicitors Group ought to be sufficient to enable the proper coordination of the proceedings.

94. Ms Dannreuther explained that the Claimants proposed that the Steering Committee be comprised of Milberg London LLP, Keller Postman UK Limited, Pogust Goodhead and Leigh Day. She pointed out that these are sophisticated Claimant Firms with considerable experience of running group litigation. She referred to the evidence in Oldnall 15 to the effect that the Lead Firms (Milberg and Keller Postman) do not alone have the resources to undertake all Common Costs work in relation to the case.

95. Ms Dannreuther took issue with the Defendants' assertion that a Steering Committee is not necessary and will incur unnecessary cost. She pointed out that the Steering Committee is there to support the Lead Solicitors in progressing the litigation and particularly the resolution of the GLO Issues and to undertake the following duties; (i) ensuring GLO cases are transferred to the Management Court (prospective GLO §21), (ii) receiving Notices of Objection to entries on the Group Register, (iii) providing amended Group Register entries, (iv) giving consent to discontinuances by any Claimant on behalf of other Claimants, and (v) discharging payments for Common Costs.

96. Ms Dannreuther drew my attention to the fact that a three-tier structure is entirely normal and was employed in the first Volkswagen litigation, and endorsed by Senior Master Fontaine in ***Crossley v Volkswagen*** **[2018] EWHC 1178 (QB)**:

> "13. I consider the structure of joint lead solicitors, a steering committee and a solicitors' group, the latter being for solicitors who have 20 or more clients, is a sensible balance to strike in terms of distribution of work and involvement of all claimants or prospective claimants"

Decision

97. It has been said more than once that this litigation is of an unprecedented scale. I should not lightly disregard the Claimants' solicitors' assessment of the task they face and the most efficient way to organise their resources. The structure proposed is not novel and has been used to great effect in other cases.

98. I accept the suggestion contained in Oldnall 15 that without this structure it is entirely possible that three Lead Solicitor firms would be required. Any concern over the proportionality of costs is met by nature of the considerations imposed by CPR r.44.3. Ms Dannreuther's observation that "a stitch in time saves millions" has some resonance here.

99. In the circumstances, I accept the Claimants' proposal.

Issue 21

100. This issue arises in the_Vauxhall Litigation. The issue is whether the Defendants should provide disclosure regarding Authorised Dealers, including the periods in which the entities were authorised, details of trading names and whether the Defendants should provide information about additional Authorised Dealers.

101. Ms Mulcahy KC framed this issue in the following way. The Claimants seek provision of information by the Defendants about (a) the periods for which the Authorised Dealers listed at Schedule 5 to the Order have been or were authorised by one or more of the First to Sixth Defendants to supply, repair or service Affected Vehicles, (b) the trading names of the Authorised Dealers listed at Schedule 5 known to any of the Defendants during those periods and the periods for which such Authorised Dealers traded under that name, and (c) details of any changes to the company names of the Authorised Dealers listed at Schedule 5 over the period to which the claims relate. She suggested that these provisions should be deleted from the GLO for the following reasons:

i) In relation to (a), the Claimants who purchased vehicles from dealerships will have a document recording the name of the dealership available to them and will know where they bought their vehicles. The relevance of the periods of time for which any particular retailer was an Authorised Dealer is unclear and the Claimants have not explained what this is intended to address and why.

ii) As to (b), the relevance of the trading names used by Authorised Dealers is similarly unclear. There is no jurisdiction to order this to be provided. There is no application made for specific disclosure, but in any event, the Claimants have failed to identify any existing "document" (i.e. "anything in which information of any description is recorded" CPR r.31.4). The Claimants are asking the Defendants to create, rather than disclose a document. There has been no request or application pursuant to CPR Part 18, and in any event information ordered under Part 18 must clarify or give additional information in relation to a "matter which is in dispute in the proceedings": CPR r.18.1(1). The previous legal or trading names of the Authorised Dealers are not in dispute in the proceedings.

iii) As to (c), this is publicly available information that the Claimant firms can obtain by searching for the relevant entities on Companies House. There is no reason why the Defendants should be ordered to conduct public record research for the Claimants. Further, the majority of the Claimants are likely to have no difficulty identifying an Authorised Dealership by its current legal name, yet the Claimants are seeking to have the Defendants do searches of every Authorised Dealership, even those for whom there has never been a change of name or where there is no risk of confusion between their legal and trading names.

102. On behalf of the Claimants, Mr Kramer KC pointed to clause 51 of the Mercedes-Benz GLO which provides:

> "The Defendants shall provide by 4pm on the date falling 28 days from the date of this Order;
>
> (a) The period between 1 January 2012 to 31 December 2022 for which the Authorised Dealerships listed at Schedule 4 to this Order have been or were authorised by one or more of the First to Fifth Defendants to supply, repair or service Relevant Vehicles;

> (b) The trading names of the Authorised Dealerships listed at Schedule 4 of this Order known to any of the Defendants during those periods and the periods for which each such Authorised Dealerships traded under that name; and
>
> (c) Details of any changes to the company names of the Authorised Dealerships listed Schedule 4 of this Order over the period from 1 January 2012 to 31 December 2022."

103. Mr Kramer KC makes the point that Claimants are only pursuing claims against those dealership entities which were authorised by the vehicle manufacturers. However, the Defendants know and the Claimants do not know and cannot easily verify that the relevant Dealership Defendant was authorised at the relevant time. It is in the interests of all parties for this to be clear so that claims against unauthorised dealerships can be discontinued.

104. Mr Kramer KC's short point was that in all six GLO cases other than Peugeot-Citroën and Vauxhall, the Defendants have provided or agreed to provide this information in one way or another. In Peugeot-Citroën the Claimants sought all of the above information by way of Part 18 request, as part of the GLO application, and the Defendants agreed to confirm the legal names and addresses of Authorised Dealerships and the periods of authorisation but not to provide (b) and (c) ordered in the Mercedes-Benz GLO. In his view that was unsatisfactory. He summarises the Defendants' stance as "your clients know where they purchased the vehicles".

Decision

105. I have no doubt the information should be provided in the form set out in the Mercedes-Benz GLO order. The Defendants will uniquely know whether dealerships were Authorised and for what periods. The Defendants would or should know the trading names of the Authorised Dealers. The failure to provide this information is not within the spirit of cooperation that the Court requires from the parties. I have no doubt the Claimant firms could set about cross-checking all of this information from public sources. It is the case that there are currently 146,000 Claimants who have issued claims in the Vauxhall Litigation. To undertake a task which costs £10 on each claim results in costs being incurred of £1,460,000. I do not suggest that this will be required in every claim, however it goes to demonstrate the extent to which costs can start accumulating unless careful thought is given to the way in which litigation tasks are accomplished.

Issue 23

106. This issue arises in the Vauxhall litigation. It is an issue that appeared to have been agreed between the parties but now relates to the wording of paragraph 23 of the proposed GLO. The wording which had been agreed was:

> "The requirement to file individual Notices of Change pursuant to CPR 42.2 where a Claimant changes legal representation is hereby dispensed with and replaced by the obligation to file a list in the form attached at Schedule 7 to this Order no later than 4pm on the date falling 21 days after the date the parties

> are informed by the Court that the President has consent to the making of the Order, and thereafter at the same as service of the updated Group Register served in accordance with paragraph 29."

The Defendants now wish to add the words:

> "Any Claimant who changes legal representation is to inform the Defendants as soon as reasonably practicable after doing so without prejudice the forgoing …"

before the agreed wording.

107. I am not sure I fully understood the reason for the Defendants' stance on this issue. Ms Mulcahy KC's proposition was that the defendants are entitled to know which law firm is representing the Claimants because they may need to correspond with that law firm about their client. She said that the agreed wording meant there might be a time lag of up to three months before they are told of any change. She referred to an occurrence in February 2023 when some clients of Harcus Parker had transferred their claims to Milberg. A letter to Harcus Parker dated 16 February 2023 enquiring about the progress of the GLO application was not responded to until Milberg confirmed the position at the end of February.

108. In the course of argument I pointed out to Ms Mulcahy KC that this was prior to a GLO being made and the situation post-GLO, lead solicitors having been appointed, would be very different. The simple fact is that clause 29 of the proposed GLO requires Milberg to serve an electronic coy of the Group Register on the Vauxhall Defendants within 14 days of its establishment. Clause 30 of the proposed GLO requires Milberg to review and update the Group Register every three months. Clause 28 of the proposed GLO provides that the Group Register shall record both the firm of solicitors instructed by the Claimant and the date of removal of a Claimants claim from the Group Register, if it is removed. Lastly, clause 35 of the proposed GLO provides that a Claimant's claim shall remain on the Group Register until such time as they serve a notice of discontinuance or the Court orders removal of the claim from the Register. These provisions seem adequate and are entirely conventional.

109. I suggested to Ms Mulcahy KC that it was highly unlikely the Defendants solicitors would wish to correspond with individual Claimants post-GLO. She conceded that it was unlikely to happen frequently.

110. Ms Dannreuther maintained her opposition to the additional wording on the ground that it was unnecessary.

111. In my judgment the Defendants' fears are entirely misplaced. This issue has typified much of the argument before me today. Minor points as to the wording of the GLO are being taken which, with proper co-operation and goodwill, should not be in issue and taking up the Court's time. I can see no good reason to include the additional wording as it achieves nothing in the overall scheme of this litigation except potentially adding unnecessarily to the burden on the parties where there is already a perfectly sensible scheme for notifying the Defendants of any changes in representation.

112. I hope that I have identified and considered each of the issues raised by the parties. I would ask that my decisions are now incorporated into the draft GLOs and that they are e-mailed to me for final approval and sealing.