Neutral Citation Number: [2026] EWHC 1403 (KB)

Case No: KB-2026-000030
KB-2026-000032

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
WC2A 2LL

Date: 10/06/2026

Before:

MRS JUSTICE HILL DBE
SENIOR MASTER COOK

- -

Between:

JANET FUSCHILLO and others	**Claimants**
- and –	
1) JOHNSON & JOHNSON **(2) JOHNSON & JOHNSON MANAGEMENT LIMITED** **(3) KENVUE UK LIMITED**	**Defendants**

- -

Michael Rawlinson KC, Jonathan Adkin KC, Andrew Smith KC, Kate Boakes and Max Archer (instructed by **KP Law Limited**) for the **Claimants**
Alexander Antelme KC, Andrew Davis KC, Elizabeth Boon and David Myhill (instructed by **Jones Day**) for the **Defendants**

Hearing dates: 29 and 30 April 2026
Further written submissions: 8 May 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on Wednesday 10 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Hill DBE:

Introduction

1. By Claim Forms issued on 13 and 14 October 2025 ("the October Claim Forms"), the Claimants (or where they have died, their estates/dependants) seek damages from the Defendants in negligence and deceit. They contend that they have contracted malignant mesothelioma or cancer of the female reproductive system ("ovarian cancer"), due to their exposure to mineral talc-based Baby Powder carrying Johnson & Johnson branding.

2. Claim number KB-2026-000030 includes those Claimants who are alleged to have contracted mesothelioma and claim number KB-2026-000032 includes those who are alleged to have contracted ovarian cancer. In total 1,964 Claimants have issued claims under these two Claim Forms. On 22 May 2026 a third Claim Form was filed with the Court, on behalf of a further 183 Claimants.

3. The Claimants have served a Generic Particulars of Claim ("GPOC") in relation to the October Claim Forms, but a Defence has not yet been filed. In pre-action correspondence, the Defendants have denied the allegations made in the Claimants' letters of claim.

4. The overriding objective includes a requirement that all cases are dealt with "expeditiously": CPR 1.1(2)(d). Given the significant impact on life expectancy of a mesothelioma diagnosis, in particular, the Claimants understandably seek directions from the Court to ensure the progress of the litigation with all possible expedition, so as to maximise the number of Claimants who live to see its conclusion. However, this is complex and heavily contested litigation which will involve expert evidence from a range of disciplines; and consideration of scientific evidence extending over decades. This will inevitably be a substantial piece of litigation, which needs careful case management.

5. The October Claim Forms were initially issued in the Circuit Commercial Court in the Business and Property Courts in Manchester. On 19 December 2025 Bright J transferred the claims to the King's Bench Division Civil List at the Royal Courts of Justice. I gave directions at a hearing on 6 February 2026 as a result of which a further case management hearing took place from 29-30 April 2026.

6. This hearing was for consideration of the following applications and issues, which this judgment addresses:

   (i) The Claimants' applications for a Group Litigation order dated 13 October 2025 and 27 November 2025 (**"the GLO Applications**"): paragraphs [12]-[17] below;

   (ii) The Claimants' Applications dated 13 October 2025, 26 January 2026 and 27 February 2026 for dispensation from certain requirements of the CPR (**"the Dispensation Applications"**): paragraphs [18]-[19];

   (iii) The Claimants' application dated 21 April 2026 to amend the Generic Particulars of Claim (**"the Amendment Application**"): paragraphs [20]-[144];

(iv) The GLO issues: paragraphs [145]-[148]; and

(v) The terms of the GLO: paragraphs [149]-[179]; and

(vi) The Claimants' application dated 27 February 2026 for an order for a staged approach to the litigation and directions to a trial of the "Stage 1 Issues" (**"the Staged Approach Application"**) paragraphs [180]-[184].

7. We are grateful for the substantial degree of co-operation between all the legal representatives and for the comprehensive written and oral submissions from counsel.

The Claimants' claims in overview

8. Baby Powder was invented and developed by the First Defendant and supplied for sale at all material times within the UK by its wholly owned subsidiaries, initially the Second Defendant and then the Third Defendant.

9. The Claimants contend that Baby Powder products sold within the UK were contaminated with asbestos, a known toxin. Additionally, they claim that the talc used in Baby Powder by its nature was comprised of particles that were morphologically similar to asbestos such as to give rise to a similar, but independent, risk of harm.

10. The Claimants' case is that the Defendants knew (at least during the period relevant to their claims) of both of these facts and therefore that Baby Powder represented a foreseeable risk of harm to end users in the UK. Notwithstanding this, it is alleged that the Defendants concealed this knowledge from the public and continued to sell Baby Powder in the UK until 2023, at which point its main base ingredient was changed from talc to cornstarch.

11. The Claimants' case is that the Defendants are liable in negligence and in deceit. It is said that the Defendants caused or permitted to be marketed for sale a product which they knew or should have known was unsafe and potentially dangerous, while representing that it was, for example, "pure" and "of clinically proven mildness". The Claimants seek damages accordingly.

The GLO Applications

12. Under CPR 19.21, a Group Litigation Order ("GLO") is an order made under CPR 19.22 to provide for the case management of claims which give rise to common or related issues of fact or law ("the GLO issues").

13. The Claimants' applications for a GLO in this case were supported by a statement from their solicitor Thomas Longstaff dated 13 October 2025 ("Longstaff 1"). At [113]-[117] thereof, Mr Longstaff contended that a GLO was appropriate because, in summary, (i) the size of the Claimant cohort was such that the only practicable method of common case management was by way of a GLO; (ii) the claims raise common issues of fact and law (almost all of which had been agreed by the Defendants as the relevant issues); (iii) a GLO provides a sensible means of ensuring all parties are bound by findings in relation to such common issues; and (iv) the requirement for the GLO to be publicised will mean that those who are eligible and wish to bring a claim can do so under the GLO, which would bring efficiencies in terms of costs and Court time.

14. The Defendants agreed that it was appropriate to manage the litigation by way of a GLO. They also agreed that a single GLO could be made encompassing the claims relating to mesothelioma and those relating to ovarian cancer.

15. Our provisional view was that a GLO was appropriate in this case, for the reasons given in Longstaff 1, and in particular, in light of (i) the likely number of Claimants; (ii) the beneficial case management mechanism of appointing Lead Solicitors; and (iii) the means provided by a GLO for the resolution of the common issues, including the level of damages, in an effective manner, and through the identification of Lead Cases.

16. On 1 May 2026 Sharp LJ, the President of the King's Bench Division, consented to the making of a GLO in this case under CPR 19.22(2)(d). A GLO will therefore be made.

17. We set out the GLO issues and further details of the terms of the GLO at paragraphs [144]-[179] below.

The Dispensation Applications

18. By these applications the Claimants sought dispensation from the requirements of CPR 16 to serve (i) individual Schedules of Loss; (ii) individual supporting medical reports; (iii) details of dependents; (iv) details of any provisional damages claim with the Generic Particulars of Claim; and (v) initial disclosure with the Particulars of Claim.

19. Now that a GLO will be made, the Defendants agree that these dispensations are appropriate because the GLO process will enable this information to be provided in a more proportionate way. The terms of the GLO itself reflect the dispensations sought, but for the avoidance of doubt, the Claimants' applications are granted.

The Amendment Application

Introduction

20. Under CPR 17.3, the Court may give permission for a party to amend their statement of case. However, under CPR 17.4(2), if the effect of an amendment is to "add or substitute a new claim", after the end of a relevant limitation period, the Court may only give permission to add or substitute the new claim if the new claim "arises out of the same facts or substantially the same facts as are already in issue on…a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings".

21. The Claimants' application to amend the GPOC was filed on 21 April 2026, supported by the eleventh witness statement from Mr Longstaff of the same date ("Longstaff 11"). Material relevant to the application was also to be found in the statements of Nathalie Smyth, the Defendants' solicitor, dated 20 March 2026 ("Smyth 1"), Mr Longstaff's tenth statement dated 2 April 2026 ("Longstaff 10") and Ms Smyth's further statement dated 24 April 2026 ("Smyth 2").

22. By the directions order made after the hearing on 6 February 2026, all applications to be determined at the 29-30 April 2026 hearing should have been filed by 27 February 2026. Accordingly, the Claimants' Amendment Application was filed late. However, both parties recognised that it should be determined sooner rather than later, not least

as the Generic Defence has not yet been filed and the outcome of the application would impact on future case management.

The issues and the parties' positions in overview

23. The parties narrowed many of the issues on the application prior to the hearing and we are grateful to them for their efforts. The disputes on the application arose from the Claimants' proposed amendments relating to the following issues:

    (1) iron as part of the crystalline structure of talc;

    (2) iron as a "standalone" contaminant causing disease; and

    (3) "platy" talc (defined at paragraph [40(iii)] below).

24. In summary, the Claimants submitted that the proposed amendments amounted to a helpful clarification of their case, that would assist the Court and the parties. The amendments raised no new claims, but if they did, CPR 17.4(2) was engaged, as the factual issues raised were going to be litigated in any event.

25. The Defendants argued that issues **(2)** and **(3)** above amounted to entirely new allegations which directly contradicted some express pleas in the GPOC; were unclear; and were not supported by expert or other evidence, such that the Court could not be satisfied that they had a real prospect of success. They proposed that the Court refuse the applications, albeit permitting the Claimants to return to Court, perhaps at the next hearing listed for 20 July 2026, with draft Re-Amended Generic Particulars of Claim, addressing the issues they had raised.

The legal principles

26. Whether to permit an amendment under CPR 17.3 is an exercise of the Court's discretion, and in exercising the discretion, the overriding objective is of central importance: *Pearce v East and North Hertfordshire NHS Trust* [2020] EWHC 1504, per Lambert J at [10] a); *Invest-Bank PSC v El-Husseini* [2024] EWHC 1235 (Comm), per Bryan J, at [26].

27. Applications to amend always involve "the Court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted": *Pearce* at [10] a); see also *Invest-Bank* at [29].

28. Amendments "should be "properly formulated" (i.e. appropriately particularised and not an abuse of process) and "clearly formulated" (i.e. readily understandable)": *Invest-Bank* at [35].

29. If a proposed amendment raises a new claim, permission will not be granted if it does not have "a real prospect of success"; but the Court should not engage in a "mini-trial" when considering whether or not to permit an amendment: *Invest-Bank* at [40]-[41], citing *Scott v Singh* [2020] EWHC 1714 (Comm) at [19].

30. While there is support for the proposition that where an amendment does not seek to introduce a new claim, but provides further particulars based on factual material in

support of an existing pleaded point, the Court should not engage in an assessment of the merits; it would be contrary to the overriding objective to allow any amendments to be made which have no real prospects of success: *Invest-Bank* at [42]-[44].

31. The timing of the application to amend should be considered and weighed in the balance: *Pearce* at [10] c). "Lateness" is a "relative concept"; an amendment is "late if it could have been advanced earlier, or involves the duplication of cost and effort, or if it requires the opposing party to revisit any of the significant steps in the litigation (e.g. disclosure, witness statements and expert reports)": and even if an amendment is merely "late" rather than "very late" there is a "heavy burden" on the applicant to justify it: *Invest-Bank* at [46].

32. Amendments involving claims outside a statutory limitation period are governed by section 35 of the Limitation Act 1980 and CPR 17.4. There is a four-stage test, as explained in *Ballinger v Mercer Ltd* [2014] EWCA Civ 996, [2014] 1 WLR 3597 at [15] and *Mulalley & Co Ltd v Martlet Homes Ltd* [2022] EWCA Civ 32 at [38], namely:

> "(1) is it reasonably arguable that the opposed amendments are outside the applicable limitation period?
>
> (2) did the proposed amendments seek to add or substitute a new cause of action?
>
> (3) does the new cause of action arises out of the same or substantially the same facts as are already an issue in the existing claim?
>
> (4) should the Court exercise its discretion to allow the amendment?": *Geo-Minerals GT Ltd v Downing* [2023] EWCA Civ 648 at [25].

33. The principles applicable to stage (2) were summarised in *Diamandis v Wills* [2015] EWHC 312 (Ch) at [48] (citing *Berezovsky v Abramovich* [2011] EWCA Civ 153, [2011] 1 WLR 2290 at [59] to [69]) as follows:

> "(1) The 'cause of action' is that combination of facts which gives rise to a legal right; (it is the 'factual situation' rather than a form of action used as a convenient description of a particular category of factual situation…
>
> (2) Where a claim is based on a breach of duty, whether arising in contract or tort, the question whether an amendment pleads a new *cause of action* requires comparison of the unamended and amended pleading to determine (a) whether a different duty is pleaded (b) whether the breaches pleaded differ substantially and (c) where appropriate the nature and extent of the damage of which complaint is made … (Where it is the same duty and same breach, new or different loss will not be new cause of action. But where it is a different duty or a different breach, then it is likely to be a new cause of action).
>
> (3) The cause of action is every fact which is material to be proved to entitle the claimant to succeed. Only those facts which are material to be proved are to be taken into account; the pleading of unnecessary

> allegations or the addition of further instances does not amount to a distinct cause of action. At this stage, the selection of the material facts to define the cause of action must be made at the highest level of abstraction…
>
> (4) In identifying a new cause of action the bare minimum of essential facts abstracted from the original pleading is to be compared with the minimum as it would be constituted under the amended pleading…
>
> (5) The addition or substitution of a new loss is by no means necessarily the addition of a new cause of action…Nor is the addition of a new remedy, particularly where the amendment does not add to the 'factual situation' already pleaded…": *Geo-Minerals* at [27].

34. As to stage (3):

> "(1) "Same or substantially the same" is not synonymous with "similar".
>
> (2) Whilst in borderline cases, the answer to this question is or may be substantially a 'matter of impression', in others, it must be a question of analysis …
>
> (3) The purpose of the requirement at Stage 3 is to avoid placing the defendant in a position where he will be obliged, after the expiration of the limitation period, to investigate facts and obtain evidence of matters *completely outside the ambit of and unrelated to* the facts which he could reasonably be assumed to have investigated for the purpose of defending the unamended claim.
>
> (4) It is thus necessary to consider *the extent to which* the defendants would be required to embark upon an investigation of facts which they would not previously have been concerned to investigate…At Stage 3 the Court is concerned at a much less abstract level than at Stage 2; it is a matter of considering the whole range of facts which are likely to be adduced at trial …
>
> (5) Finally, in considering what the relevant facts are in the original pleading a material consideration are the factual matters raised in the defence…": *Geo-Minerals* at [28].

The GPOC

35. The context for the proposed amendments is the very comprehensive GPOC. It currently runs to some 75 pages and 136 paragraphs.

36. Sections I-IV introduce the product in question and the parties.

37. GPOC, [4] explains that the claim is brought in relation to individuals who are alleged to have developed one of more of (a) malignant pleural mesothelioma; (b) malignant peritoneal mesothelioma; (c) various forms of cancer of the female reproductive

system, compendiously referred to as "ovarian cancer"; and/or (d) lung granulomata and/or fibrosis, together with uterine fibroids.

38. GPOC, [6] defines "the Cohort" as those who have contracted one of the diseases in [4] and are alive, together with those who have died, where claims are brought on their behalf. GPOC, [5] explains that their claims are said to arise from their "repeated and regular exposure" to Baby Powder over a period of at least 5 years, where at least some of their exposure occurred over 10 years prior to the clinical onset of the disease complained of.

39. Section V is entitled 'The Composition of Baby Powder'. In a subsection entitled 'The Geology of Talc' the Claimants set out the following:

> "25. Talc is a naturally occurring phyllosilicate material derived from metamorphic deposits. The usual form of talc is as a crystalline structure with layers shaped both tetrahedrally and octahedrally and whose main atomic constituents are magnesium, silicon and oxygen, as represented by the generalised chemical formula $Mg_3Si_4O_{10}$ $(OH)_2$. However, iron in the oxidative states known as ferrous (Fe^{2+}) and ferric (Fe^{3+}) can occur in the crystal structure of talc. Ferrous (Fe^{2+}) and ferric (Fe^{3+}) substitute for magnesium cations, with ferrous iron being more common. The importance of the presence of ferrous and ferric to the carcinogenic processes arising from exposure to talc (and where present to asbestos) are particularised later in this statement of case."

40. GPOC, [26]-[27] plead in summary, that (i) when talc forms in the earth it is formed in several types of geologic deposits; (ii) talc occurs within these deposits in two distinct forms known as "habits", namely "platy talc" and "fibrous talc"; (iii) "platy talc" is characterised by particles formed in a disc or plate shape when viewed microscopically; and (iv) "fibrous talc" has two subtypes, "fibrous" and "asbestiform" talc. The Defendants do not accept these pleaded distinctions between platy talc, fibrous talc, and asbestiform talc.

41. At GPOC, [28] the Claimants set out their case on what the parties referred to in submissions before us as the "heavy metals" issue, as follows:

> "28. Talc deposits are inherently not pure (*i.e.*, they do not consist only of talc). As to this:
>
> (a) The formation of talc deposits within the earth is commonly accompanied by veins of other minerals that occur in and around them. These are "associated minerals" and "associated metals" that commonly occur with talc in multiple geological settings. The associated minerals and metals may exist before the talc deposit forms, they may be formed concurrently with talc deposit mineralisation, or they may form after talc deposits have formed. Such minerals include asbestos minerals.
>
> (b) Other associated minerals which are found within talc deposits such as sulphides, oxides, and other silicates, may or likely collectively contain amounts of heavy metal elements including (inter alia) arsenic,

> cadmium, chromium, cobalt, iron, lead, manganese, mercury, nickel, selenium, thorium, uranium, and zinc.
>
> (c) As particularised below, such minerals and metals (not limited to asbestos) were found in processed talc materials or products."

42. GPOC, [29] avers as follows:

> "29. For the reasons of lack of identification, filtering and removal as pleaded below, such contaminants (including and especially asbestos) found their way into the Baby Powder as sold via the processes hereafter particularised at paragraph 35 at seq."

43. In a further subsection, entitled 'The Contamination of Baby Powder', the Claimants set out their case on the inter-relationship between heavy metals and the diseases at issue in the claims:

> "39. Asbestos, asbestiform and fibrous forms of talc and heavy metals survived the process of mining, processing, manufacturing and packaging and were present in the finished and sold end-product of Baby Powder.
>
> 40. Accordingly, over the course of their exposure to Baby Powder... each and every member of the Cohort…was exposed to each of the following, namely:
>
> (a) Asbestos fibres;
>
> (b) Talc powder, including asbestiform/fibrous talc fibres; and
>
> (c) One or more of the other metals and minerals identified in paragraph 28 above;
>
> and in such quantity as was sufficient to either have contributed materially to the risk of any subsequent mesothelioma or asbestos based cancer occurring or, alternatively, to have made a material contribution in fact to the development of the cancers and/or the benign conditions referred to in paragraph 4(d) above. The particulars of the Claimants' case on causation are set out below."

44. Sections VI-VII are entitled 'Marketing and Packaging' and 'The Cohort's Individual Use of Baby Powder'.

45. Section VIII addresses 'Toxicity and Causation of Injury'. The section begins as follows:

> "56. The constituents of Baby Powder which are relevant to the diseases under consideration within this claim are "(a) talc; and (b) asbestos contamination.
>
> 57. For the avoidance of doubt, it is alleged that Baby Powder contained many other toxins, the presence of which augmented the foreseeable

> risk of harm to the Defendants which use of or exposure to their product by consumers as directed created, but the outcome of any toxicity arising from exposure to the same lies outside the scope of these proceedings. Thus, those other toxins are relied upon as relevant to breach of duty/foreseeability generally but not to causation of physical harm actually suffered.
>
> 58. The toxic action of Baby Powder led each member of the Cohort…to develop one or both of two separate categories of disease-outcome, namely (a) non-carcinogenic conditions; and (b) cancer."

46. In the subsection entitled 'Carcinogenic Conditions', at GPOC [63], the Claimants set out their case on how particles and fibres come to be present within and around the lung, and/or the peritoneal cavity and/or the reproductive organs. They refer, in summary, to (i) inhaled Baby Powder which is inspired into the lung alveoli and thereafter remains in the pleura; (ii) inhaled Baby Powder which travels into the lymphatic system, whether or not it has first passed through the alveoli; (iii) Baby Powder which was applied manually to the perineal area; and (iv) the absorption of particles through the action of the superficial lymphatic system.

47. GPOC, [64] sets out the Claimants' current understanding of how once in situ, those particles and fibres contribute to the formation of the subsequently appearing cancer.

48. At [64](a) the Claimants aver that talc and asbestos act in such a way as to create and release Reactive Oxygen Species ("ROS"), in particular the Hydroxyl radical ("OH"), which will attack DNA within human cells and ultimately drive the genetic mutations which prevent planned cell death, the absence of which is the essence of cancer. At paragraph 64(b), four alternative methods by which ROS are created relevant to the presence of talc or asbestos in the body are set out, two of which are relevant to issue ***(1)*** on this application.

49. The first, at [64](b)(i), involves ferric (in the Fe^{3+} form) present in the crystalline structures rapidly changing to Fe^{2+} in the presence of ROS; and then the ferrous itself becoming a rapid promoter of the creation of further and additional ROS via a phenomenon known as the "Fenton Reaction", whereby contiguous Hydrogen peroxide molecules are oxidated to form OH.

50. The second is detailed further at paragraph [105] below.

51. GPOC, [64](c) pleads that over time, and through the actions of the ROS, the DNA of surrounding cells becomes increasingly damaged, leading to the initiation of the cancer process; the creation of a "micro-environment" where the body becomes increasingly unable to recognise the "otherness" of the proto-cancer and less able to destroy it; the promotion of the cancer's development to the stage where it develops its own "private" blood supply to nourish it; and thereafter further growth of the tumour to the point where it becomes clinically evident and/or there is metastasis of the same.

52. The Claimants then set out their overall contention that:

> "65…the foregoing mechanisms of toxicity…amount to proof, on the balance of probabilities, that the exposure to Baby Powder made (at least) a material contribution in fact to their subsequent cancer."

53. The Claimants make clear that the mechanisms of toxicity set out in [65] are "pleaded only in summary overview" and that they "will be further and fully particularised within the medical and scientific expert evidence to be adduced following disclosure".

54. Sections IX and X set out the Claimants' case on the Defendants' knowledge of the composition of Baby Powder and of the risks posed to Baby Powder users; and their alleged suppression of relevant information in this regard.

55. Sections XI-XIII address, respectively, the liability of the First Defendant, and then the Second and Third Defendants, in negligence; and then the Claimants' case against all three Defendants in deceit.

56. Section XIV is headed 'Injury, Loss and Damage'. It includes the following:

> "125. By reason of the negligence and or by reason of the deceit set out above each member of the Cohort was exposed (or was subject to a materially increased exposure) to Baby Powder and suffered a resultant exposure (or materially increased exposure) to asbestos, fibrous/asbestiform talc and/or metal contaminants (in the manners described at paragraphs 5(a), 55, 60, 61 and 63 above).
>
> 126. Such exposure (or materially increased exposure) caused one or more of the diseases identified in paragraph 4 above (meaning that it made a material contribution to the risk of mesothelioma where such was the ensuing disease and in relation to the other diseases that it made a material contribution in fact... to those other diseases). By reason of having contracted such diseases each such member of the Cohort suffered pain, injury, loss and damage."

(1): Iron as part of the crystalline structure of talc

(i): The Claimants' proposed amendments

57. The Claimants' currently pleaded case is that iron in the oxidative states known as ferrous (Fe^{2+}) and ferric (Fe^{3+}) can feature as part of the crystalline structure of talc; and that ferrous and ferric play a part in the Fenton Reaction contributing to the development of cancer: see GPOC, [25] and [64](b)(i) at paragraphs [39] and [49] above. They seek to make a series of amendments to the GPOC to clarify their case on this issue.

58. *First*, the Claimants seek permission to add further detail to the Geology of Talc subsection, by adding these words to the end of [25]:

> "Where Fe^{2+}/Fe^{3+} are present in the crystalline structure, it is better considered as a variation in the composition of the talc rather than as a contaminant."

59. The purpose of this amendment is to underscore the distinction between iron as part of the crystalline structure of talc and iron as a standalone contaminant (which is the subject of more controversial proposed amendments, under ***(2)*** below).

60. The Claimants also seek to clarify their case on "heavy metals" in this respect (with the proposed amendments in underlining and struck through text) as follows:

> "28. Talc deposits are inherently not pure (*i.e.*, they do not consist only of talc). As to this:
>
> ~~(a)~~ The formation of talc deposits within the earth is commonly accompanied by veins of other minerals that occur in and around them. These are "associated minerals" and "associated metals" that commonly occur with talc in multiple geological settings. The associated minerals and metals may exist before the talc deposit forms, they may be formed concurrently with talc deposit mineralisation, or they may form after talc deposits have formed. Such minerals include asbestos ~~minerals.~~
>
> ~~(b) Other associated minerals which are found within talc deposits such as sulphides, oxides, and other silicates, may or likely collectively contain amounts of~~
>
> and iron (both as part of the crystalline structure and as part of chemical compound contaminants such as (but not limited to) Iron Sulphides) which have reached the end user because their presence was either not searched for, noted or acted upon within the baby powder as sold, together with the following further heavy metal [minerals namely[1]] arsenic, barium, cadmium, chromium[2], copper, iron compounds, lead, manganese, mercury, nickel, selenium, thallium, thorium, uranium, vanadium and zinc.
>
> The presence of heavy metals other than iron is relevant only to deceit. They are relevant to deceit because (without prejudice to the particularity of the pleading in respect of that cause of action set out below), their presence was inconsistent with any representation that the product as sold was claimed to be pure, mild or best for use on infants.
>
> ~~(c) As particularised below, such minerals and metals (not limited to us asbestos) were found in processed talc materials or products.~~"

61. The Defendants oppose the first group of proposed amendments to [28], relating to the role of iron, that runs from "and iron" to "as sold" in the text above. They agree all

[1] GPOC, [28] includes the phrase "heavy metal elements including (inter alia) arsenic [etc]" whereas AGPOC, [28] refers to "heavy metal minerals namely arsenic [etc]", without showing that the earlier text has been amended. While the overall meaning is clear the Claimants will need to clarify the wording to be used.

[2] GPOC, [28] includes "cobalt" after "chromium" in the list. Cobalt does not feature in AGPOC, [28] as either text which remains or text which has been struck through. This should also be addressed.

those amendments relating to iron and other heavy metals, which is the entirety of the section beginning with the phrase "together with the following". These draft amendments are primarily relevant to the issues under ***(2)*** below. For the purposes of issue ***(1)***, the phrase "as part of the crystalline structure" is relevant.

62. *Second*, the Claimants wish to clarify that when contending that the relevant contaminants found their way into Baby Powder as sold, their case is also that the iron in the crystalline structure did the same. They seek to do this by adding the following words to the end of paragraph [29] (see paragraph [42] above):

> "Additionally, the existence of Fe within the crystalline structure of talc and asbestos as a variant of the chemical formula was equally not identified or, where found, not removed for similar reasons."

63. *Third*, they seek to amend the 'Contamination of Baby Powder' section thus:

> "40. Accordingly, over the course of their exposure to Baby Powder... each and every member of the Cohort…was exposed to each of the following, namely:
>
> (a) Asbestos fibres; and
>
> (b) Talc powder, including asbestiform/fibrous talc fibres; and
>
> (c) Iron cations; and
>
> (d) One or more of the other metals, ~~and~~ minerals and compounds identified in paragraph 28 above~~;~~.
>
> With respect to the substances set out [in] (a), (b) and (c) above, they were present sufficiently often and in such quantity as was sufficient in the case of the cohort's usage of Baby Powder to either have contributed materially to the risk of any subsequent mesothelioma or asbestos based cancer occurring or, alternatively to have made a material contribution in fact to the development of the cancers and/or the benign conditions referred to in paragraph 4(d) above. The particulars of the Claimants' case on causation are set out below. With respect to the substances set out in (a), (b), (c) and (d) above they were present sufficiently often and in such quantity as was sufficient in the case of the cohort's usage to render the sale of them as a deceit as pleaded hereinafter…".

64. *Fourth*, the Claimants apply to amend the 'Toxicity and Causation of Injury' section, in the following respects:

> "56. The constituents of Baby Powder which are relevant to the diseases under consideration within this claim are (a) talc; and (b) asbestos contamination and (c) Fe (whether present in the crystalline structure or…as forming a constituent of contaminant compounds).
>
> 57. For the avoidance of doubt, and as set out above, it is alleged that Baby Powder contained many other toxins, the presence of which augmented the foreseeable risk of harm to the Defendants which use of,

> or exposure to, their product by consumers as directed, created. However, with the exception of Iron (whether in the lattice structure of asbestos or talc or as a contaminant compound) ~~but~~ the outcome of any toxicity arising from exposure to the same lies outside the scope of these proceedings. Thus, those other toxins are relied upon as relevant to breach of duty/foreseeability generally and/or deceit but not to causation of physical harm actually suffered. For the avoidance of doubt, it is also alleged that all members of the cohort were, over time, exposed to talc, asbestos and Fe together with the heavy metals in paragraph 28, albeit in respect of the latter, such exposure was relevant to deceit only."

65. These proposed amendments are again more relevant to issue ***(2)*** below: it is the phrases "iron cations", "crystalline structure" and "lattice structure" in AGPOC, [40], [56] and [57] which are relevant to this issue.

66. Further, in introducing [63], the Claimants seek to amend as follows:

> "63. The cancers can…be classified according to the methods by which the talc and/or asbestos (together with Fe) within the Baby Powder enter the victims' bodies and they are set out below..."

67. *Fifth*, the Claimants propose amending their case on the Defendants' knowledge in this way:

> "68. Throughout the Claim Period, the First Defendant, the Second Defendant and the Third Defendant (each of the latter two during their respective periods of responsibility…) had knowledge that Baby Powder contained, or that there was a significant risk that any given bottle the product would contain: (a) Asbestos; (b) Fibrous and/or asbestiform particles of talc; and/or (c) Fe."

68. *Sixth*, the Claimants seek permission to amend the particulars of negligence to reflect the role of iron in the crystalline structure.

69. GPOC, [106] contains 24 allegations of negligence against the First Defendant. The Claimants seek to amend sub-paragraph (a) to read that the First Defendant:

> "(a) Caused or permitted to be marketed and sold a product which it knew to be contaminated with asbestos and/or fibrous and or asbestiform talc and/or iron (either within the crystalline structure of talc or as a contaminant) when they knew (or ought to have known) that fibres with those habits could, and did, cause injury..."

70. GPOC, [110] contains 14 allegations of negligence against the Second and Third Defendants. The Claimants seek to amend sub-paragraph (a) to read that they:

> "(a) Caused or permitted to be marketed and sold a product which it knew to be contaminated with asbestos and/or fibrous and or asbestiform talc and/or iron, when they knew (or ought to have known) that fibres with those habits could, and did, cause injury..."

(ii): Submissions and discussion

71. The Defendants accepted that this group of amendments related to an existing line of pleading in the GPOC and did not involve the Claimants seeking to add or substitute a new claim. Accordingly, the applicable power is that under CPR 17.3.

72. There would be an injustice to the Claimants if they were not permitted to clarify their case in these respects; and the overriding objective militates in favour of them be permitted to do so sooner rather than later.

73. The application to make these amendments was made "late" in the sense that it was after the deadline set by the 6 February 2026 directions order; and arguably the Claimants could have "tidied up" their pleadings in this regard earlier.

74. However, the GPOC itself is a very substantial and complex document. The proceedings are still at an early stage. No Defence has been filed, disclosure given or witness statements prepared. The Defendants would have to explore the issue of the role of iron in the crystalline structure anyway, as it is already pleaded in the GPOC, principally at [25] and [64](b)(i). They did not contend that allowing these amendments would lead to them suffering any particular prejudice.

75. The Defendants' main objection to these proposed amendments was that some aspects of them were unclear. In particular, it was not clear whether some of the proposed amendments related to the Claimants' case on iron in the crystalline structure or iron as a standalone contaminant. It was said that they potentially fell foul of the requirements that amendments be properly and clearly formulated: see paragraph [28] above. We deal with these issues in turn.

76. Mr Rawlinson KC confirmed that the reference to "iron cations" in AGPOC, [40](c) meant the positively charged ferrous and ferric ions referred to by the denotations $^{2+}$ and $^{3+}$ in GPOC, [25]. This was, accordingly, a reference to iron in the crystalline structure of talc and not iron as a standalone contaminant. This much is also clear from the fact that iron as a standalone contaminant is dealt with separately later in AGPOC, [40](d).

77. Mr Antelme KC was right to highlight that the amended wording proposed for [106] is "iron either within the crystalline structure of talc or as a contaminant" whereas that for the otherwise identical provision in [110] is simply "iron". He understandably queried whether a deliberate distinction was being drawn between the allegations against the First Defendant in [106] and the Second and Third Defendants in [110].

78. We consider that it can be assumed at least for present purposes that the use of the word "iron" in [110] is intended to be a shorthand for both variants of iron, as were it otherwise the Claimants would have said so. The same applies to the use of "Fe" alone in AGPOC, [63] and [68](c).

79. It is correct that the Claimants have used some inconsistent nomenclature, referring variously to "iron" and "Fe", but these phrases are interchangeable.

80. We are not therefore persuaded that any lack of clarity is sufficiently problematic that the amendments should not be allowed.

*(iii): Conclusion on issue **(1)***

81. For all these reasons we exercise our discretion to permit the proposed amendments in under issue ***(1)***.

(2): Iron as a standalone contaminant causing disease

82. The principal proposed amendments relating to this topic are those relating to the GPOC at [28], [40], [56] and [57]: see paragraphs [41], [43], and [45] above.

(i): Whether the amendments involve a "new claim" for CPR 17.4 purposes

83. The Claimants were content to proceed for the purposes of the argument on the basis that it was reasonably arguable that these amendments were outside the applicable limitation period. However, the parties fundamentally disagreed as to whether the proposed amendments sought to add a new cause of action, for the purposes of stage (2) of the *Geo-Minerals* test.

84. Mr Rawlinson KC submitted that far from raising a new claim, the Claimants were narrowing down a claim that was already pleaded. The Claimants had initially pleaded in GPOC, [40] that all of the metals and minerals referred to in [28] contributed materially to the risk of any subsequent mesothelioma or asbestos based cancer occurring or, alternatively made a material contribution in fact to the development of the cancers and/or the benign conditions referred to in [4](d). Now, by AGPOC, [40], they were making clear that they only relied on iron as having had these effects.

85. This submission did not sit easily with the wording of GPOC, [56]-[57]: as noted at paragraph [45] above, these paragraphs say in terms that the constituents relevant to the diseases under consideration within this claim are talc and asbestos contamination; and that the "many other toxins" present in Baby Powder were not relied by the Claimants as relevant to the "causation of physical harm".

86. Longstaff 10 at [67] had accepted that the Claimants' needed to clarify their claim in this regard. Mr Rawlinson KC candidly described the original drafting of [57] as a "mistake": he said that he was grateful to the Defendants' team for pointing out that the "width of…[the] assertion…[at 57]…did not lie at all" with what he described as "the many other assertions elsewhere in the pleading that iron had a central role in carcinogenesis".

87. Mr Antelme KC did not accept this analysis. He submitted that the Claimants had positively pleaded at GPOC [56] that the relevant constituents of Baby Powder were talc and asbestos contamination. No mention was made there of iron or any other metal. Further, the Claimants had set out a positive case at GPOC [57] that the "many other toxins" in Baby Powder were not relevant to the physical harm actually suffered. They could not now rely on [40] to suggest that this was a pleading of causation because that paragraph had always said that "[t]he particulars of the Claimants' case on causation are set out below". For the Claimants to argue, now, that iron was indeed a standalone contaminant causing disease was a complete "volte face": it was a new claim, and the Claimants could not satisfy the requirements of CPR 17.4.

88. Looked at in isolation, GPOC, [56]-[57] clearly state that the only constituents of Baby Powder relevant to the diseases in question were talc and asbestos contamination. However, when the GPOC is looked at as a whole, the Claimants' position is clearer. It had always been the Claimants' case that iron played a role in the carcinogenic process; and that certain metals and minerals made a material contribution to the diseases in question: see GPOC, [28] and [40] at paragraphs [41] and [43] above. It could be said that the causation element of the Claimants' negligence claim had been completed by these paragraphs, irrespective of [56] and [57]. Whether or not that is correct, we accept counsel's explanation that the failure to refer to metals and minerals in [56]-[57] was a drafting error.

89. For these reasons, amending [56]-[57] now does not involve adding a new claim. It ensures the remedying of an internal drafting inconsistency.

90. We are fortified in the conclusion that this does not involve adding a new claim by Longmore LJ's observations in *Berezovsky* at [59], to the effect that:

> "A cause of action is that combination of facts which gives rise to a legal right. A cause of action in tort has, as its essential ingredients, a plea of duty, breach of duty and consequent damage to the claimant. If it happens to be the case that an element of one of those essential ingredients is misstated, misdescribed or omitted, it does not mean that a correct statement, description or inclusion is a new cause of action; even if the formal result of such a misstatement, misdescription or omission might technically be that an unaltered claim would have to be dismissed, that still does not mean that a corrective alteration involves or constitutes a new cause of action".

91. Here, the Claimants had not omitted their case on the causative effect of metals and minerals entirely: they had pleaded their case at GPOC, [40], but failed to carry it over to [56]-[57] in the dedicated 'Toxicity and Causation of Injury' section.

(ii): Clarity/completeness

92. The Defendants also took issue with the proposed amendments on the grounds of a lack of clarity; and contended that the Claimants' pleaded claim in respect of iron as a standalone contaminant was incomplete.

93. *First*, they observed that AGPOC, [64], which sets out the Claimants' current understanding of how particles and fibres contribute to the formation of cancer, does not refer to iron as a standalone contaminant as opposed to as iron in the crystalline structure of talc, which specifically features in GPOC, [64](b)(i).

94. However, as Mr Rawlinson KC highlighted, the Claimants are not required to plead all the mechanisms of toxicity at this stage. They have pleaded their overall case at [65] that "on the balance of probabilities…the exposure to Baby Powder made (at least) a further material contribution in fact to their subsequent cancers", which suffices to complete the pleading of their claim for present purposes. They had also made clear that the causative mechanisms which they had pleaded would be "further and fully particularised within the medical and scientific expert evidence to be adduced following disclosure".

95. The same point applies to the fact that although the Claimants have pleaded at AGPOC, [40] that iron (among other things) made "a material contribution in fact" to the development of the benign conditions referred to in the GPOC, [4](d), there are currently no specific references to iron in the sections of the GPOC addressing the mechanisms applicable to those conditions ([59]-[61]).

96. *Second*, the Defendants made the point that although the Claimants seek to amend GPOC, [68] to aver that the Defendants knew that Baby Powder contained "Fe", no specific sources of knowledge in relation to iron are pleaded at [69]-[70]. However, the Claimants' plea of the fact of knowledge at AGPOC [68](c) suffices for present purposes: details of the sources of that knowledge can be pleaded at the disclosure stage or addressed in the evidence.

97. *Third*, the Defendants observed that the Claimants have not applied to amend the GPOC to plead that they had specific knowledge of the risks of iron. However Mr Rawlinson contended that *Hughes v Lord Advocate* [1963] AC 837 and *Jolley v Sutton LBC* [2000] 1 WLR 1082 made clear that the Claimants need only prove the proposition that Baby Powder, as packaged and sold, made a material contribution to injury, and that the Defendants knew or ought to have known about it, and that in continuing to sell it, they were in breach of duty. They were not required to prove precisely what was known about each aspect. Further pleading on the Defendants' knowledge of the risks of iron may well follow disclosure in any event. We accept those submissions.

98. Again, therefore, we do not consider that any lack of clarity or completeness justifies refusing the Claimants permission to amend on issue ***(2)***.

(iii): Other matters relevant to the exercise of the Court's discretion

99. In light of our conclusion that these amendments do not involve a new claim, the general discretion under CPR 17.3 applies.

100. Again, we bear in mind the prejudice to the Claimants if they are not permitted to clarify their claim by making these amendments, especially if the Defendants seek in future to "hold" the Claimants to the erroneous drafting of [57].

101. The amendments have the effect of narrowing the original claim in respect of metals and minerals at GPOC, [40] and so arguably assist, rather than prejudice, the Defendants.

102. We reiterate the observations we made about the timing of the application and the stage of the proceedings at paragraph [74] above. There is no basis at this stage for concluding that these amendments should not be permitted because they plainly do not have a real prospect of success bearing in mind the limits of the Court's role in this regard on an amendment application: see paragraphs [29]-[30] above.

103. In light of all these factors, we are satisfied that it is appropriate to grant permission to make the amendments which confirm the Claimants' case that iron was a standalone contaminant in Baby Powder.

104. If we are wrong in our reasoning and conclusion at paragraphs [88]-[91] above, and the Claimants are in fact adding a "new claim" through these amendments, then we are

satisfied that the criteria in CPR 17.4(2) are met. This is because (i) GPOC, [40] already makes clear that the presence of other toxins (which includes iron) is relied upon as relevant to breach of duty/foreseeability; and (ii) the Defendants are content for the Claimants to amend [28], [40] and [57] to make the same point in relation to their deceit claims. This means that any new claim to the effect that iron is a standalone contaminant causing disease arises out of "the same facts or substantially the same facts as are already in issue" on other elements of the negligence claim and on the deceit claims. The same factors as are set out at paragraphs [100]-[103] above would then justify the exercise of the discretion in the Claimants' favour.

(iv): AGPOC, [64](b)(ii)

105. Within the GPOC section on Toxicity and Causation of Injury, the Claimants also seek to add to add a further "stage" in the second method of creating ROS described at [64](b)(ii), so that it would read as follows:

> "Whether or not the talc and/or asbestos contains ferric, long thin fibres of any sort will attract assault by the body's innate and adaptive immune systems (in particular neutrophils, macrophages and dendritic cells). The neutrophils and macrophages operate by seeking to engulf the fibre and once engulfed, to dismantle it to the point of biological neutrality. Given the length of those fibres, engulfment is not possible and so the neutrophils and macrophages fail but in doing so, release further Ferritin which coats structures below the surface of the asbestos or talc crystal with Fe^{2+} (referred to then as a ferruginous body) which then in turn becomes available to create further OH and which calls for further inflammatory support which in turn, fails but leads to the creation of yet more OH. As a further concomitant of failing, the immune system cells cause the deposition of a coat of iron around the fibre under attack which itself then becomes a further, independent source of ferric, which in turn leads to further Fenton Reactions in the area surrounding the non-engulfed fibre".

106. Mr Antelme KC was right to point out that this sub-paragraph does not specifically identify iron as a standalone contaminant. However, the introductory words suggests that this mechanism applies to the fibres of the talc and/or asbestos themselves rather than any contaminant; and that the amendment in fact relates to the neutrophils and microphages themselves releasing Ferritin. If that is right, while this amendment does relate to the role of iron, it does not relate to the role of iron in the crystalline structure or as a standalone contaminant

107. Be that as it may, in our judgment, the Claimants should be permitted to amend in this way. It would have been open to the Claimants simply to have asserted that the talc components, asbestos components and the other contaminants had materially contributed to the mesothelioma and the ovarian cancer. However, they have sought to assist the Defendants and the Court by providing further details of the causative mechanisms in the GPOC; and are now seeking to describe one such further mechanism. These are effectively pleadings of "lines of evidence" to support the Claimants' overarching contention on causation. Early notice of this issue should assist the Defendants' experts in formulating a response.

*(v): Conclusion on issue **(2)***

108. Accordingly, we grant the Claimants permission to make the amendments they propose under issue ***(2)***.

(3): Platy talc

(i): The Claimants' proposed amendments

109. As noted at paragraphs [46]-[51] above, GPOC, [63] and [64] are where the Claimants set out their case on how particles and fibres come to be present within and around the lung, and/or the peritoneal cavity and/or the reproductive organs [63]; and how once in situ, those particles and fibres contribute to the formation of the subsequently appearing cancer [64].

110. The Claimants seek to amend [63] in these respects:

> "63. The cancers can...be classified according to the methods by which the talc and/or asbestos <u>(together with Fe)</u> within the Baby Powder entered the victims' bodies and they are set out below:
>
> (a) The *inhaled* proportion of the Baby Powder which is inspired into the lung alveoli and thereafter remains in the pleura. As to this:
>
> (i) These particles are to be taken to have materially contributed to the risk of any pleural mesothelioma which eventuated thereafter in any individual case (and hence are to be taken to be a cause in law of that condition in each of those individual cases).
>
> (ii) The relevant particles are
>
> - the fibrous and asbestiform forms of inhaled talc and/or asbestos where those particles (i) are narrower than 3 μm; and (ii) have a sufficiently high Aspect Ratio as defined in paragraph 27(b) above…
>
> - <u>Platy forms of talc which are narrower than 3 μm and which also can travel to the alveoli and arrive at the pleura. Whilst their contribution to carcinogenesis differs to that of fibrous and asbestiform talc, platy talc is a material contributor in fact to mesothelioma, as set out below.</u>
>
> (b) The *inhaled* proportion of the Baby Powder which travels into the lymphatic system whether or not it has first passed through the alveoli. As to this:
>
> (i) This is one method by which such particles can reach the peritoneal cavity and the organs contained therein (including the organs of the female reproductive system).

(ii) Where the inhaled fragment has entered the lymphatic system before reaching the alveoli, it is not necessary for such fragments to exhibit any particular minimum Aspect Ratio and therefore it is not just asbestiform and fibrous habits of talc and/or asbestos which can enter the lymphatic system at this stage: platy talc can do so as well.

~~(iii) However, in order for particles to pass through the alveoli, they must be narrower than 3 µm, and only asbestiform, and some fibrous particles can do so. Thus only asbestiform and sufficiently narrow fibrous particles may enter the lymphatic system having passed through the alveoli"~~…".

111. GPOC, [64] sets out the alternative methods by which ROS are created relevant to the presence of talc or asbestos in the body. After the second such method (as amended in the manner set out at paragraph [105] above), the Claimants seek to add this text:

> "Platy talc which is able to pass through to the pleura is capable of being successfully engulfed by the macrophages present there, but where talc is inhaled over a substantial period of time, the activity of the macrophages (albeit successful in the case of platy talc in contradistinction to when they attack fibrous or asbestiform talc) creates additional Fe which, in turn via the Fenton reaction then creates yet further OH radicals and thereby material [sic] contributes to any subsequent cancer i.e. in addition to the processes set out in (i) and (ii) above…".

112. The Claimants also seek to add the following to the end of [64]:

> "(vi) For the avoidance of doubt, talc thereby, and in all its habits, materially contributes to the risk of mesothelioma and/or materially contributes in fact to mesothelioma and/or materially contributes in fact ovarian cancer. Where both talc and asbestos are present together, they act in a synergistic manner".

113. Accordingly, the effect of the proposed amendments is to (i) reverse the case previously pleaded at [63](b)(iii) to the effect that platy talc cannot pass through the alveoli to a contention at [63](a)(ii) that it can do so; (ii) add a further mechanism for the creation of ROS to [64]; and (iii) aver that not only does talc in all its habits have a causative potency (reflecting the amendment to include platy talc as doing so) but that when talc and asbestos are present together they act in a synergistic manner.

(ii): The reason for the application

114. Longstaff 11 at [24](b) explained that the application to amend was being made because the Claimants "now hold evidence from their expert lung oncologist (privilege over which is not waived by this reference) which demonstrates that in fact the role of platy talc in the pleura is (indirectly) causative of mesothelioma".

115. The Defendants contended that Mr Longstaff's evidence was opaque: it did not explain what the Claimants' new evidence is, nor exhibit it or refer to any scientific evidence

supporting the theory which the Claimants now seek to advance. In circumstances where the amendment amounted to a *volte face* from a previous assertion, this evidence provided no reassurance that the proposed amendments had reasonable prospects of success.

116. But for the difficulties set out at paragraphs [128]-[138] below, we would have been willing to accept Mr Longstaff's evidence in this regard, because as Mr Rawlinson KC highlighted, while expert material of the kind alluded to by the Defendants might be relevant to whether the draft amendments had a real prospect of success, the court should assess those prospects on the basis of the statements of case, rather than attempting to evaluate the evidence or conducting a mini-trial: *CNM Estates v Carvill-Biggs* [2023] EWCA Civ 480; [2023] 1 WLR 4335 at [48], citing *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3, [2021] 1 WLR 1294 at [103]-[107].

(iii): Whether the amendments involve a "new claim" for CPR 17.4 purposes

117. Again, the parties disagreed as to stage (2) of the *Geo-Metals* test, namely whether the proposed amendments sought to add or substitute a new cause of action.

118. Mr Rawlinson KC submitted that there was no new claim involved.

119. GPOC, [55] sets out the Claimants' case on the ways in which Baby Powder entered the bodies of those in the Cohort. It includes two specific methods in relation to platy talc namely (i) after the talc was "applied to their genital or perineal area, by entry into the vagina where it travelled…by contact with the endometrium or other tissue within the reproductive system to cause granulomatous/fibrotic injury": [55](a)(vi); and (ii) after inhalation, when it travelled through the respiratory system leading…into the lung parenchyma where it acted either to reduce the body's ability to avoid cancer from other fibrous/asbestiform fibres or simply caused a local granulomatous/fibrotic process to form": [55](b)(vi). However, the other methods of entry described in [55] appear to relate to Baby Powder in general, therefore including all its constituent elements, including platy talc.

120. GPOC, [63](b) reflected the Claimants' case that if a person breathes in talc, it does not necessarily go to their lungs: it can go into the lymphatic system and from there can go anywhere, including the female reproductive system. GPOC, [63](b)(ii) specifically avers that it is not just asbestiform and fibrous habits of talc and/or asbestos which can enter the lymphatic system in this way, but "platy talc can do so as well".

121. GPOC, [63](d) describes another process by which platy talc can get into the lymphatic system, as follows:

> "(d) Meanwhile, and by a separate process, particles which are inhaled and travel into the lymphatic system as above, or those which lie externally on the surface of the mucosal skin near the anal and vaginal passages can then become absorbed by that contact internally by the action of the superficial lymphatic system (i.e. without the need to have passed through the vagina and the cervix). Once absorbed in these ways the particles then drain along through the lymph to the pelvic lymph nodes. Once lodged in the pelvic lymph nodes their presence intoxicates those nodes so that the nodes cannot fully play their role they would

> otherwise have been identifying and destroying the proto-cancer forming as a result of [the process described in GPOC, [63](c)(ii)]."

122. In light of these paragraphs, Mr Rawlinson KC contended that the Claimants had always made clear that their case is that platy talc had a contributory role in the development of cancer: in simple terms, where any form of talc, and that includes platy talc, gets into the reproductive system, it gets into the lymph nodes, it switches off the body's response to the growing cancer in the ovaries, and something which might have been destroyed will not be destroyed.

123. He referred to the general averment at GPOC, [65], that it followed from the foregoing mechanisms of toxicity, which had been "pleaded only in summary overview above and which will be further and fully particularised within the medical and scientific expert evidence to be adduced following disclosure", that "in the case of those in the Cohort who developed a relevant cancer, those mechanisms amount to proof, on the balance of probabilities, that the exposure to Baby Powder made (at least) a material contribution in fact to their subsequent cancer".

124. On that basis, he argued that the amendments relying on the presence of talc in the pleura and the synergistic effect particularise existing causes of action, by adding a new mechanism of injury; but did not amount to advancing a new cause of action, applying the principles set out in *Geo-Minerals* at [27]. The general discretion to permit amendments in CPR 17.3 should be exercised, for the reasons set out in respect of issues ***(1)*** and ***(2)***.

125. The Defendants opposed this analysis.

126. Mr Antelme KC submitted that following *Geo-Minerals* at [27](1), the Court should look at the "combination of facts which gives rise to a legal right" and the "factual situation". Here, the issues of (i) whether platy talc is capable of passing through the alveoli; (ii) whether the Defendants knew that to be the case, and that it caused a foreseeable risk of harm, such that they were in breach of duty; and/or (iii) whether platy talc was capable of causing mesothelioma, were all new facts and had not been advanced on the GPOC.

127. Further, the new claim does not arise out of "the same facts or substantially the same facts" as are already in issue, for the purposes of CPR 17.4: rather the amendments relate to facts that are all significantly different material facts to those currently in issue. On that basis, he argued, the application to amend failed at stage (3) of the *Geo-Minerals* test and the Court should not permit the amendments.

(iii): Conclusion on issue ***(3)***

128. We have concluded that it is not necessary or appropriate for us to reach a conclusion on the issues set out in the preceding section. This is because, whatever be the merits of those arguments, we consider that the amendments in relation to platy talc should not be permitted at this stage because the Claimants' pleaded claim in this regard remains unclear and incomplete, for the reasons advanced by the Defendants in their submissions. In essence, there is force in the Defendants' argument that the amendments proposed to [63] and [64] have not been properly "carried through" the

rest of the AGPOC; and if that is deliberate, it leaves some key gaps in the Claimants' case in this regard.

129. The Claim Forms refer to Baby Powder having been contaminated with "(i) asbestos, a well-known toxin; and (ii) other particles, in particular asbestiform and fibrous talc, that gave rise to a similar risk of harm".

130. As Mr Antelme KC highlighted in submissions, the formulation of "asbestos, asbestiform and fibrous talc" or materially similar wording has been used repeatedly in the GPOC. For example (i) GPOC, [38] avers that the processes of mining and processing of talc for use in Baby Powder gave rise to "the material risk of contamination of Baby Powder with fibrous talc and…asbestos"; (ii) GPOC, [39] describes "asbestos, asbestiform and fibrous forms of talc and heavy metals" surviving the process of mining and processing of talc and being "present in the finished and sold end-product of Baby Powder"; and (iii) GPOC, [41] avers that cornstarch-based powder replaced talc-based Baby Powder in 2023, and did not contain "asbestos, asbestiform / fibrous talc nor any of the potential contaminants identified in paragraph 28 above". The Claimants have proposed no amendments to these paragraphs to reflect the platy talc issue.

131. These positive references to asbestiform and fibrous talc, when read alongside GPOC, [27], suggest that the drafter was deliberately not referring to platy talc – that being the third of the talc "habits" referred to in GPOC, [27] alongside asbestiform and fibrous talc.

132. More significant, though, are the following examples.

133. *First*, when pleading their case on the Defendants' knowledge of the composition of Baby Powder, AGPOC, [68] refers to knowledge by the Defendants that Baby Powder contained, or that there was a significant risk that it any given bottle would contain, "(a) Asbestos; and/or (b) Fibrous and/or asbestiform particles of talc; and/or (c) Fe". The detailed particulars of knowledge that follow at GPOC, [79] are similarly limited to asbestos, fibrous and asbestiform talc fibres: none of them refer to platy talc. No amendments are proposed to these paragraphs.

134. *Second*, the Claimants' case on the Defendants' knowledge of the risks posed to Baby Powder users at [80] links back to their knowledge of the composition of Baby Powder "as set out above", and so presumably to [68]. The fact that [80] itself refers to the Defendants having knowledge that the inhalation and/or application of Baby Powder was dangerous and gave rise to a risk of injury by virtue of asbestos and/or talc "in all its forms and habits", which would include platy talc, is anomalous in the circumstances. That is especially so because the detailed particulars of knowledge of the risks that follow at GPOC, [81]-[82] are again focussed on asbestos ([81]) and "[f]ibrous and/or asbestiform talc" which is "mineralogically and morphologically similar to asbestos" ([82]), rather than platy talc, which is not mentioned. GPOC, [83]-[93] which addresses the Defendants alleged suppression of information, makes no mention of platy talc and cancer, or knowledge of the risks of those. Again, there is no proposal to amend these parts of the Claimants' case.

135. *Third*, when pleading their case on breach of duty at AGPOC, [106] and [110], the Claimants refer to the Defendants causing or permitting to be marketed and sold a

product which they knew to be contaminated with "asbestos and/or fibrous and/or asbestiform talc". Although the Claimants have proposed amendments to these paragraphs to refer to iron, they have made no such proposals regarding platy talc.

136. *Fourth*, AGPOC, [125] refers to 'Injury, Loss and Damage' and contends that those in the Cohort have suffered exposure to "asbestos, fibrous/asbestiform talc and/or metal contaminants". No mention is made of platy talc.

137. *Fifth*, AGPOC, Section XV sets out the Claimants' case on limitation. One aspect of the argument is the contention at [134] that the Defendants deliberately concealed facts including as to "the presence of asbestos and/or asbestiform/fibrous talc within Baby Powder". No mention is made of platy talc.

138. We are not therefore persuaded that it would be appropriate to permit these amendments at this time. We accept the Defendants' proposal that the Claimants should be afforded time to reflect and should return to Court at the July hearing with a fresh amendment application reflecting platy talc, if so advised.

Further alleged issues with the AGPOC

139. The Defendants contended that the Claimants' pleaded case remained unacceptably unclear on the issues of contamination and individual exposure.

140. They argued that it was unclear whether the Claimants' case was that every bottle of Baby Powder was contaminated (and if so, with which contaminants and in what amounts), or that there was a risk that any given bottle of Baby Powder was contaminated, or something else.

141. Longstaff 10 at [71] sought to clarify the Claimants' position. He wrote:

> "(c)…The Claimants do not need to assert that every single bottle ever sold contained these contaminants, rather, a positive assertion is made about the finished product as a category.
>
> (d)…It is the aggregate exposure across repeated and regular use over a period of at least five years, not exposure from any single bottle, that is asserted to have caused the conditions suffered…
>
> (f)…[t]he contamination was systemic and inherent to the product, even if its distribution across individual bottles was not perfectly uniform. The Claimants are not required to prove that every single bottle contained the contaminants: they are required to prove that regular use of Baby Powder over that period resulted in material exposure".

142. Mr Rawlinson KC confirmed during the hearing that it was not the Claimants' case, nor could they ever prove, that each and every bottle contained asbestos: rather, it was their case that the members of the Cohort, who were regular users of talc for at least 5 years, would have been exposed to sufficient asbestos to have materially increased the risk of developing mesothelioma or to have made a material contribution, in fact, to the mesothelioma and/or the ovarian cancer.

143. These indications have helpfully clarified the Claimants' case. We do not consider that the AGPOC needs further amendment to reflect them.

Conclusion

144. For all these reasons, the Claimant's Amendment Application succeeds in respect of issues **(1)** and **(2)** (iron as part of the crystalline structure of talc and iron as a standalone contaminant causing disease); but not **(3)** (platy talc).

The GLO issues

145. Under CPR 19.22(2)(b), a GLO must specify the GLO issues which will identify the claims to be managed as a group under the GLO.

146. Here, the parties have agreed the following GLO issues, subject to the underlined text which remained disputed:

> "**1. The Roles of the respective Defendants**
>
> (a) The activities undertaken by the Second and Third Defendants, whether directly or indirectly (through others), in respect of sales of Baby Powder to the UK consumer market relevant to:
>
> (i) sourcing and importation of Baby Powder; and/or
>
> (ii) manufacturing and/or preparation for sale; and/or
>
> (iii) testing and analysis of its contents (including of the ultimate source of its contents) and the method of delivery from its containers at the point of use; and/or
>
> (iv) direct or indirect marketing or advertising of the product and/or the 'get up' of the containers and their printed logos and slogans; and/or
>
> (v) contact with regulators or scientific bodies in relation to the safety of the use of Baby Powder and its purity.
>
> (b) Whether and, if so, to what extent and when any of the Second and Third Defendants' activities set out above were controlled and/or authorised and/or procured and/or directed and/or encouraged and/or influenced and/or informed by the First Defendant (either generally or as to its conduct and interactions with regulators).
>
> (c) Whether, and if so how and when the First Defendant carried out any of the above activities for the purposes of, or affecting, supply for sale in the UK market.
>
> **2. Supply of Baby Powder to the UK Market**
>
> (a) How the minerals talc and asbestos came geologically to be formed.

(b) What is the mineral asbestos, does it have distinct "forms" or "habits", and how does the mineral asbestos come to be geologically formed.

(c) At the times relevant to the Claims, how was Baby Powder constituted and was any of it contaminated by asbestos and heavy metals.

(d) From which locations was the talc contained in Baby Powder mined.

(e) By what processes was Baby Powder produced, and prepared for sale, at the times relevant to the Claims, and by whom were those processes performed.

(f) Did the mining, milling or other intermediate processes, contaminate Baby Powder with asbestos and heavy metals as alleged (and if so, which processes, when, and how).

(g) What standards applied to the testing of Baby Powder/the materials which constituted the Baby Powder at the times relevant to the Claims.

(h) What testing was conducted on Baby Powder/the materials which constituted the Baby Powder at the times relevant to the claims.

3. The use of Baby Powder

(a) How was Baby Powder marketed or advertised or promoted over the time period relevant to the Claims, and what information was, or was not, provided to consumers regarding use of the product.

(b) The circumstances in which Baby Powder came into contact with the bodies of the Claimants when used as envisaged?

(c) Whether and, if so, how Baby Powder was able to enter and/or leave the Claimants' bodies during and/or directly arising from such use, and in what quantities.

4. The Defendants' knowledge

(a) Whether, and if so to what degree and when, the Defendants knew, or should have known, that any Baby Powder contained (if it be the case) either:

(i) asbestos; and/or

(ii) "asbestiform talc" or "fibrous talc" (if such distinct "form" or "habit" is proven) and/or

(iii) other contaminants, including heavy metals;

which gave rise to a foreseeable risk of personal injury of the types claimed in these proceedings.

(b) The date (if any) when the Defendants knew, or should have known, that use of Baby Powder as envisaged (or as should have been foreseen) at the dose any individual Claimants may prove, gave rise to a foreseeable risk of personal injury of the types claimed in these proceedings.

5. Duties of Care Owed

(a) In respect of each of the Defendants separately:

(i) whether or not they owed a duty of care to the Claimants.

(ii) what the scope of any duty was and whether it changed over time and, if so, how and when.

(b) Whether any duty owed by the Defendants was owed jointly or concurrently (on the one hand) or severally (on the other) with the other Defendants.

6. Breach of duty

(a) Were any of the Defendants in breach of any duties owed to the Claimants.

(b) Insofar as the Claimants establish that one or more of the Defendants owed them a duty to take reasonable care and skill to avoid causing personal injury to them in relation to the production, distribution, supply for sale and get-up of Baby Powder:

(i) what did this duty require of each Defendant at the times relevant to each of the Claims; and

(ii) did the Defendants act in accordance with the prevailing standard of care at the times relevant to each of the Claims.

7. Causation

(a) Is the talc in Baby Powder capable of causing the diseases alleged. In particular, is the talc in Baby Powder used in the manner and with the frequency that the Claimants (or sub-groups thereof) used it capable of causing:

(i) Pleural mesothelioma; or

(ii) Peritoneal mesothelioma; and/or

(iii) High Grade Serous Ovarian Cancer involving the epithelium of the fallopian tubes or peritoneum; and/or

(iv) together with one or more of the malignant conditions in (i) – (iii) above, lung granulomata and uterine fibroids arising from the immune response to the continued presence of ingested Baby Powder as an additional non-malignant condition.

(b) Insofar as it is established that talc in Baby Powder is capable of causing the diseases alleged, to what dose of that allegedly harmful talc were the Claimants (or sub-groups thereof) exposed across each alleged method of ingress.

(c) Insofar as the alleged contamination by asbestos is proven, to what dose of asbestos were the Claimants (or sub-groups thereof) exposed from their use of Baby Powder across each alleged method of ingress.

(d) Is asbestos at that dose capable of causing the diseases alleged. In particular, is asbestos at that dose and for each alleged method of ingress capable of causing:

(i) Pleural mesothelioma; or

(ii) Peritoneal mesothelioma; and/or

(iii) High Grade Serous Ovarian Cancer involving the epithelium of the fallopian tubes or peritoneum; and/or

(iv) together with one or more of the malignant conditions in (i) – (iii) above, lung granulomata and uterine fibroids arising from the immune response to the continued presence of ingested Baby Powder as an additional non-malignant condition.

(e) If the answer to 7(a) or (d) is "yes": by what mechanism and at what dose are the diseases referred to in question 7(a) and 7(d) caused by the materials identified in those paragraphs.

8. Limitation

(a) Whether the claims herein have been or are being brought within the applicable period of primary limitation as laid out within the Limitation Act 1980 and, if not, whether the primary limitation period be disapplied under the said Act.

9. Deceit

(a) Whether the Second Defendant or Third Defendant expressly or impliedly represented to potential users of the product that it (i) did not contain contaminants or dangerous contaminants or dangerous forms of

talc; (ii) was not a health risk to humans generally; and/or (iii) was safe for the uses and exposures envisaged or foreseen.

(b) Whether any such representations were false.

(c) Whether the First Defendant authorised and/or procured that the Second Defendant and Third Defendant make any such representations.

(d) Whether the First Defendant, Second Defendant and/or Third Defendant knew that the representations were false, made them without an honest belief that they were true or were reckless as to their falsity.

(e) Whether the First Defendant assisted the Second Defendant and/or Third Defendant to make false representations pursuant to a common design between them.

(f) Whether by reason of any such false representations, the reasonable user would have assumed that Baby Powder was safe to use.

(g) Whether the First Defendant, Second Defendant and/or Third Defendant intended that the representations would induce purchase and/or use of Baby Powder.

(h) Whether Claimants who (being babies/children or otherwise under care) were not themselves induced to purchase and/or use Baby Powder may claim for deceit where they were exposed to Baby Powder by their parents and carers (on the assumption that they were induced as alleged).

10. Quantification

(a) Are the Claimants entitled to Exemplary Damages and (if so) upon what method of calculation.

(b) What rate of interest should be applied to any awards".

147. As to the underlined text, we accept the Claimants' submission that the phrase "heavy metals" should be included in issues 2(c), 2(f) and 4(a)(iii). The role of heavy metals is relevant to breach of duty/foreseeability in the negligence claim and to the deceit claim generally. In light of our decision on issue ***(2)*** in the Amendment Application, the role of iron is also relevant to the causation of disease.

148. Accordingly, these are the issues that will be included in the GLO. However, it is appropriate for the list of GLO issues to be kept under review; and under CPR 19.24(a) the Court may give directions varying the GLO issues.

The terms of the GLO

Key elements of a GLO

149. PD19B sets out certain key features of a GLO.

150. Paragraph 6.1 provides that once a GLO has been made a Group Register will be established "on which will be entered such details as the Court may direct of the cases which are to be subject to the GLO". The Group Register usually takes the form of a spreadsheet. There are typically Standard Minimum Requirements for entry of a claim onto the Group Register.

151. Under paragraph 14:

> "14.1 The management Court may direct that the GLO claimants serve "Group Particulars of Claim" which set out the various claims of all the claimants on the Group Register at the time the particulars are filed. Such particulars of claim will usually contain—
>
> (1) general allegations relating to all claims; and
>
> (2) a schedule containing entries relating to each individual claim specifying which of the general allegations are relied on and any specific facts relevant to the claimant.
>
> 14.2 The directions given under paragraph 14.1 should include directions as to whether the Group Particulars should be verified by a statement or statements of truth and, if so, by whom.
>
> 14.3 The specific facts relating to each claimant on the Group Register may be obtained by the use of a questionnaire. Where this is proposed, the management Court should be asked to approve the questionnaire. The management Court may direct that the questionnaires completed by individual claimants take the place of the schedule referred to in paragraph 14.1(2)".

152. Accordingly, in cases of this kind the Claimants' general allegations are set out in a Group Particulars of Claim and the detail of an individual Claimant's case is provided by means of a questionnaire. The questionnaire is usually referred to as a "Schedule of Claimant Information" or "SOCI".

The agreed terms of the GLO in this case

153. The parties had engaged in extensive discussions as to the detail of the terms of the GLO prior to the 29-30 April 2026 hearing. The disputes on the wording of the terms that required resolution at the hearing related to matters such as (i) the date for the service of first iteration of the Group Register; (ii) the "cut off" date for new Claimants to join the GLO; and (iii) the process for providing SOCIs. These issues were resolved after discussion during the hearing.

154. The Group Register is capable of being established by the Lead Solicitors and copies filed with the Court and served on the Defendants by 19 June 2026.

155. In order to be entitled to enter on to the Group Register, a Claimant whose claim falls within the scope of the GLO must have issued a Claim Form by 4 pm on 18 January 2027 and served that Claim Form within 7 days of the Claimant receiving the sealed

Claim Form from the Court. Such Claims must be entered on to the Group Register by 4 pm on 22 March 2027.

156. Initial (or Stage 1) SOCI, signed with a Statement of Truth, together with such medical records that the Lead Solicitors hold in respect of each Claimant, will be provided (i) by 4 pm on 26 June 2026 in respect of 350 Claimants; and (ii) by 4 pm on 30 October 2026 in respect of the balance of the Claimants whose claims are listed on such Claim Forms that have been issued on or before 22 May 2026. Any Claimant who issues proceedings and is entered on the Group Register in the future must serve these documents within 90 days of such entry.

157. More detailed information for a smaller group of Claimants will be provided by way of a Supplemental (or Stage 2) Schedule of Claimant Information, the detail of which will be considered in the future.

The contents of the initial SOCI

158. The contents of the draft initial SOCI was the subject of discussion before, during and after the hearing.

159. Each of the claims forming part of this GLO is a personal injury claim. In a conventional personal injury claim or claim under the Fatal Accidents Act 1976 (as amended) ("the FAA"), the CPR provides that a defendant should be provided with certain prescribed information. A defendant is entitled to: (i) brief details of the claimant and their personal injuries (CPR PD16, paragraph 4.1); (ii) an individual Schedule of Loss containing details of past and future losses claimed in the proceedings (CPR PD16, paragraph 4.2); (iii) a medical report in support of the injuries alleged (CPR PD16, paragraph 4.3); (iv) details of any claim for provisional damages (CPR PD16, paragraph 4.4) and, in the case of a claim brought under the FAA, details of the dependents and nature of the dependency claim (CPR PD16, paragraph 5.1).

160. Further, one important function of the information to be provided in the SOCIs is to assist the parties and the Managing Judge to identify lead cases. In *Cavallari v Mercedes-Benz Group AG and Others* [2023] EWHC 512 (KB) at [44] Senior Master Fontaine made the following observation:

> "I recognise that is necessary to strike a proportionate balance between:
>
> i) including what is strictly necessary in terms of specifying a complete cause of action, assisting the parties and/or the Managing Judge to identify potential lead cases, and providing the Defendants with sufficient information to obtain a reasonably informed view about the likely quantum of claims; and
>
> ii) keeping the exercise as straightforward as possible, so that excessive and costly queries are kept to a minimum, and where possible more detailed information be provided at a later stage in proceedings, possibly by a more limited group of Claimants, when identifying an appropriate pool of Claimants from which to identify potential lead claimants".

161. Here, the only source of the Defendants' knowledge about individual Claimants is currently the content of the lists of Claimants appended to the issued Claim Forms. At present they do not know whether the Claimants seeking damages in relation to mesothelioma have suffered pleural or peritoneal mesothelioma; nor whether those who have suffered ovarian cancer have a condition which involves their ovaries, fallopian tube and/or peritoneum. No Claimant has yet been identified as suffering one of the non-malignant conditions referred to in the GPOC.

162. The Claimants recognised that there was an imbalance in the information currently available to the Defendants. However, there remained disagreement between the parties as to the level of detail that was required about each Claimant at this stage of the proceedings and as to what was practicable and proportionate. Further written submissions were provided on 8 May 2026 on the disputed questions, which we were required to resolve.

(i): Question 2: Use of Johnson's Baby Powder

163. The parties agreed the following questions:

> "2a. Which specific Baby Powder products (as defined at Annex 1 to the GPOC) were used
>
> 2b. For each product used the date the Individual began using the Product (yyyy)
>
> 2c. For each product used the date the Individual stopped using the Product (yyyy)".

164. The Defendants proposed a further question:

> "2d. For each Product and each period of use identified in 2a-c.: how, in what manner, where on the body, with what frequency and in what circumstances was the Product used".

165. The Claimants objected to this question on the basis that the information required was too granular and was adequately captured in the previous questions. They argued that to provide detail as to the manner of application, precise body location, frequency and circumstances of each period of use over potentially decades would be unduly both burdensome as well as being unnecessary.

166. We consider that this information should be provided. We do not accept that the provision of this information is akin to providing a witness statement, as the Claimants contended. The answer to this question will ensure that the Defendants and the Court are provided with basic information about the frequency and circumstances of each Claimant's alleged use of Baby Powder. The Claimants' initial stance on this issue, set out in Appendices 1 and 2 to Longstaff 1, was that information about the "frequency and application" of Baby Powder would be provided. We cannot therefore accept that its provision would be unduly burdensome to the Claimants or their representatives.

(ii): Question 3: Diagnosis Details

167. The parties agreed the following questions:

> "3a. Details of diagnosis including a summary of the clinical diagnosis and date on which diagnosis given.
>
> 3b. Date of onset of symptoms (yyyy).
>
> 3c. Whether Pathology is known to have been undertaken.
>
> 3d. Details of any non-malignant conditions in respect of which a claim is made".

168. The Defendants proposed adding the words "and if so, the result" to question 3c.

169. The parties also proposed differing wordings for question 3e.

170. The Claimants proposed that question 3e would read:

> "3e. If the Claim is in respect of a Deceased, the cause of death recorded on the Death Certificate, if held by the Claimant".

171. The Defendants' proposed wording was:

> "3e. If the Claim is in respect of a Deceased, the cause of death recorded on the Death Certificate, if known.

172. As to question 3c, we do not agree that the addition of the words "and if so, the result" should be included. We accept that the pathology result is a technical medical conclusion derived from a formal pathology report. Such a report would be expressed in precise histological terminology. If a Claimant has received such a document, we agree they are unlikely to be in a position to accurately summarise the specific technical finding and should not be required to do so. The pathology report will be provided to the Defendants in due course when the medical records are provided.

173. As to question 3e, the Claimants suggested that the Defendants' wording was less precise and risked inaccuracy. We consider that the information proposed in question 3e should be provided in answer to the question as formulated by the Defendants. We accept the Defendants' submission that the medical cause of death recorded on a Death Certificate is useful information which is likely to inform case management. In the circumstances we agree that it would be helpful to know whether a deceased Claimant is recorded to have died from the disease in respect of which a claim is brought or an unrelated cause. If a death certificate is available, there should be no difficulty in answering the question. We accept that there will be occasions when the person answering the question may not have the actual certificate but may know the conclusion in general terms.

174. We also note that the Claimants' concerns, in relation to the possibility that inaccurate information might be provided in a document verified by statement of truth, would be met by the wording of footnote 1 to the SOCI. This currently provides that in respect of replies to questions 3a, 3b, 3c, 4a, 4b, 6a and 6b (to which could be added 3e), the

information provided by the individual would be understood to be to the best of their recollection and lay understanding.

175. In such circumstances the information should be provided.

(iii): Question 7: Provisional Claim Value

176. The parties agreed the following questions:

> "7a. Quantum Bracket
>
> 7b. Heads of Loss
>
> 7c. If the Claimant brings a claim for provisional damages, what is (i) the disease or deterioration in respect of which provisional damages are sought [and] (ii) over what period of time is the order sought".

177. The Defendants proposed a further question:

> "7d. Has a Condition and Prognosis report (or, in the case of a Deceased, a report commenting on the diagnosis and cause of death) been:
>
> (i) received; and/or
>
> (ii) has an expert instructed to provide such a report".

178. The Claimants objected to the inclusion of this question on the basis that it goes to quantum and that as the trial is some way off they are under no obligation to provide such reports at this stage. Further, they contended that it was hard to see what utility the information has to the Defendants at this stage; and that disclosure of whether an expert has been instructed risks disclosing privileged information to which the Defendants are not entitled.

179. We consider that this information should be provided in the form requested by the Defendants. We do not accept that the provision of such information at this stage is premature. As we have pointed out above, a claimant bringing a claim for personal injuries would normally be expected to serve a condition and prognosis report in support of their injuries with the Particulars of Claim. In the circumstances, there is much force in the Defendants' argument that the question of whether an expert has been instructed to produce a report or whether a report has been obtained, is likely to be useful information for the lead case selection process. We cannot see that providing information as to whether or not an expert has been instructed raises any risk of disclosing privileged information. CPR 35.10(4) provides that the instructions to an expert shall not attract privilege. In such circumstances it is difficult to see how the fact that an expert has been instructed or has provided a report could attract privilege.

The Staged Approach Application

180. Under CPR 3.1(2)(j) and (k), the Court has the power to direct a separate trial of any issue and to decide the order in which issues are to be tried. PD 19B, paragraph 15.1(1)

provides that the managing Court in group litigation may give directions for the trial of "common issues".

181. In *Municipio de Mariana v BHP Group (UK) Ltd* [2022] EWCA Civ 951 at [139] the Court of Appeal confirmed that the courts have developed a wide range of case management tools in group litigation including "the selection of lead cases, the trial of preliminary issues and the adoption of a staged approach, either in parallel with other progress in the litigation or as a stand-alone procedure".

182. By their Staged Approach Application, the Claimants propose that the litigation be organised so that a number of common issues which they contend do not require the involvement of Lead Claimants would be determined at a "Stage 1" trial, with issues requiring Lead Claimant input determined at "Stage 2" if necessary. The Stage 1 issues identified in the application are as follows:

> Issue 1: Duty of care. Did all three Defendants ("Ds") owe the Claimants ("Cs") a duty of care and if so what was the scope of that duty?
>
> Issue 2: Contamination. Did Baby Powder supplied for sale within the UK over the period 1965-2023 contain the following (or any of them), namely (a) asbestos and/or (b) fibrous asbestiform talc and/or (c) platy talc and/or (d) the metal contaminants identified as being relied upon by Cs?
>
> Issue 3: Knowledge. Did Ds know, or ought they to have known, that insofar as Baby Powder contained one or more of the contents determined in Issue 2, that as a result that regular and repeated use by consumers of Baby Powder gave rise to a foreseeable risk of physical harm and, if so, when?
>
> Issue 4: Breach of duty. Did any of the Ds breach their common law duties to Cs and (where relevant) in what year did such breach first arise?
>
> Issue 5: Deceit (i). Did the manner in which Baby Powder was supplied for sale and marketed in the UK involve the Second Defendant ("D2") and/or the Third Defendant ("D3") expressly or impliedly representing that Baby Powder (i) did not contain contaminants or dangerous contaminants or dangerous forms of talc; (ii) was not a health risk to humans generally; and/or (iii) was safe for the uses and exposures pleaded at GPOC, §5(a)?
>
> Issue 6: Deceit (ii) If so, were such representations false and did any of the Ds either know them to be false and/or make them without an honest belief in their truth and/or were reckless as to their truth or falsity?
>
> Issue 7: Deceit (iii) Did any of the Ds intend that persons be induced by such representations to purchase and/or use Baby Powder on themselves or others?
>
> Issue 8: Deceit (iv) Did D1 authorise or procure or assist pursuant to a common design, D2 and/or D3 in making any such false representations?
>
> Issue 9 Deceit (v) Can Ds be liable in deceit in respect of harm caused to babies and children arising from the use by their parents and/or carers of Baby Powder,

where their parent and/or carer so used Baby Powder in reliance on the allegedly fraudulent misrepresentations?

Issue 10: Deceit (vi) Can the Court proceed on the basis that, unless shown to the contrary in an individual case, representees relied on the alleged fraudulent misrepresentations in purchasing and/or using Baby Powder because, by reason of such representations, they assumed that it was safe for use?

Issue 11: Generic causation. Was Baby Powder capable, as a matter of medicine and science, of causing ovarian cancer, mesothelioma, or the non-malignant conditions complained of? And what is the test for causation in respect of those conditions?

Issue 12: Section 32 of the Limitation Act 1980. Are either of s.32(1)(a) or s.32(1)(b) of the Limitation Act 1980 engaged?

183. The Defendants' position at the 29-30 April hearing was that the application was premature: directions, including the content and scope of any preliminary issues, would normally only be given after the statements of case have closed, or later. That stage had not been reached here, not least given the extant Amendment Application. They also opposed the application on its merits, on the basis that the issues identified do not offer a real and substantial advantage over a trial of all issues of liability involving Lead Claimants.

184. For a range of reasons, it has now been decided to defer consideration of this application, or any variant of it advanced by the Claimants, to the 20 July 2026 hearing. Further directions have been given to facilitate that.

Conclusion

185. Accordingly, for all these reasons, the GLO Applications and the Dispensation Applications are granted. The Claimant's Amendment Application succeeds in respect of issues **(1)** and **(2)** (iron as part of the crystalline structure of talc and iron as a standalone contaminant causing disease); but not **(3)** (platy talc).

186. We will return to the Staged Approach Application at the next directions hearing on 20 July 2026.

187. We reiterate our thanks to all counsel.