Neutral Citation Number: [2026] EWHC 1925 (KB)

Case Nos: KB-2026-000030
KB-2026-001931and KB-2026-000032

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
WC2A 2LL

Date: 24/07/2026

Before:

MRS JUSTICE HILL DBE

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Between:

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

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Michael Rawlinson KC, Max Archer, Charley Turton and **Rebecca Henshaw** (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 date: 20 July 2026

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Approved Judgment

This judgment was handed down remotely at 4:30pm on Friday 24 July 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 have contracted mesothelioma and claim number KB-2026-000032 includes those who have contracted ovarian cancer. In total 1,964 Claimants have issued claims under these two Claim Forms. On 22 May 2026 ("the May Claim Form") a third Claim Form was filed with claim number KB-2026-001931 on behalf of a further 183 Claimants.

3. A Group Litigation Order ("GLO") was made on 10 June 2026, for the reasons explained in the court's judgment of the same date reported at [2026] EWHC 1403 (KB) ("*Fuschillo No. 1*") at [12]-[17]. That judgment provided an overview of the factual background to the Claimants' claims and the content of the Generic Particulars of Claim ("GPOC") at [8]-[11] and [35]-[56], to which I refer. Since that judgment, (i) on 19 June 2026 the Group Register and Register of Dependants were established pursuant to the GLO; and (ii) on 26 June 2026 the Generic Defence was filed.

4. A further case management conference ("CMC") took place on 20 July 2026. I gave my respective decisions at the end of the hearing. This judgment sets out my reasons for each decision on the following applications and issues:

   (i) The Defendants' application dated 10 July 2026 to strike out the claims of those Claimants who do not meet the Standard Minimum Requirements ("SMRs") of the GLO (**"the Strike Out Application**"): paragraphs [6]-[28] below;

   (ii) 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"** and **"Directions"**): paragraphs [29]-[59];

   (iii) The proposals for Supplemental Schedules of Claimant Information ("SOCI"s) (**"the Supplemental SOCIs"**) paragraphs [60]-[66]; and

   (iv) Two discrete costs issues and the issue of whether costs budgeting should be applied to this litigation (**"Costs and costs budgeting"**): paragraphs [67]-[78].

5. I am again grateful for the substantial degree of co-operation between all the legal representatives and for the detailed and clear submissions from counsel.

The Strike Out Application

The evidence

6. The Strike Out Application was supported by the third witness statement from Nathalie Smyth, the Defendants' solicitor, dated 10 July 2026 ("Smyth 3"). The Claimants relied on the thirteenth witness statement of Thomas Longstaff, the Claimants' solicitor, dated 3 July 2026 ("Longstaff 13") and various items of *inter partes* correspondence. Mr Rawlinson KC and his junior Ms Turton provided further updating information in their written and oral submissions.

The factual background

7. The Strike Out Application was precipitated by the fact that it has now become clear that very significant numbers of the Claimants on the claim forms cannot join the GLO, because they do not meet the SMRs for admission on to it. There are further Claimants who have elected to pursue their claims in Scotland rather than in England; and there are some who have simply decided they do not wish to continue their claims for their own reasons.

8. As at 20 July 2026, the position was as follows: (i) of the 1,964 Claimants on the October Claim Forms, 1,052 have been or will be advised by the Claimants' solicitors to discontinue their claim because they do not meet the SMRs or have chosen to proceed with their claim in Scotland, or discontinue for other reasons; (ii) of those, around 40% have confirmed their instructions to discontinue; and (iii) of the 183 Claimants on the May Claim Form, they all meet the SMRs (save for two referred to in the following paragraph).

9. The Group Register now contains 818 Claimants. In respect of each Claimant named on the Group Register, Mr Rawlinson KC assured the Court that there is currently either evidence to support the fact that the Claimant meets the SMRs, including in respect of diagnosis and cancer sub-type, or the Claimant has given clear instructions to this effect. Claimants M68 and O1946, who are named on the May Claim Form but who on further review of medical evidence, do not meet the SMRs, were not added to the Group Register. Three Claimants who currently appear on the Group Register wish to discontinue their claims to pursue a claim in Scotland instead. They are included in the 72 claims identified at paragraph [12] of this judgment. If the Group Register was updated on 20 July 2026, a further 29 Claimants would be added to it. The Claimants' solicitors have been contacted by approximately 8,922 further potential Claimants.

10. The need for large numbers of Claimants on the October Claim Forms to discontinue their claims has primarily arisen because at some point in January 2026, the Claimants' legal team decided that insofar as this claim sought damages for those who have been diagnosed with ovarian cancer, it would be limited to those with high-grade serous ovarian cancer. For this reason, on 21 April 2026 the Claimants applied to amend the GPOC, [4](c), which defines the scope of the claim, to remove the word "including" from the phrase "cancers of the female reproductive system including of the high-grade serous type".

11. The SMRs for the GLO were then drafted based on this narrower definition. Under the GLO, [22], it is a condition of being entered on the Group Register that a Claimant

complies with the SMRs as defined in [40]. The SMRs in respect of ovarian cancer set out in the GLO, [40(f)(iii)] is limited to Claimants who have developed ovarian cancer of the high-grade serous type, or who bring claims in respect of those who have died as a result of its development.

12. A smaller, but not insignificant, number of Claimants - 72 as at 14 July 2026 - wish to discontinue their claim to pursue a claim in Scotland instead. 16 wish to discontinue their claims for other reasons. Some of these may also not meet the SMRs.

13. Absent a strike out, there will inevitably be further movement in these figures over the coming months, in that (i) the Claimants' solicitors anticipate that many more, if not all, of the large number of Claimants they have advised to discontinue their claims will agree to do so; (ii) as medical records continue to be reviewed, more Claimants may be found not to meet the SMRs such that they are advised to discontinue; (iii) others may decide to pursue their claim in Scotland or discontinue for other reasons; and (iv) those Claimants who meet the SMRs will be added to the Group Register.

14. A further complicating factor is that the Claimants' solicitors have made clear that the Claimants who wish to discontinue their claims in these proceedings still have "meritorious" claims; and that they anticipate bringing fresh claims seeking damages from the Defendants for their non-high-grade serous type ovarian cancer. The same may well apply in relation to other Claimants and other individuals who have been contacted by the Claimants' solicitors.

Submissions and analysis

15. Mr Antelme KC's overarching submission was that the conduct of the litigation so far by the Claimants' solicitors was procedurally unsatisfactory and had led to a deeply lamentable situation. He questioned how it was that claims could have been issued in October 2025 in relation to individuals where the medical diagnosis was unclear. The Defendants did not understand the significant delays described by the Claimants' solicitors in obtaining complete sets of medical records, particularly given the tight time limits within the Data Protection Act 2018 for responding to a subject access request. He observed that the Claimants' solicitors had not yet obtained even partial medical records for 173 Claimants on the October Claim Forms or 39 on the May Claim Form.

16. He was critical of the failure of the Claimants to provide further information about why their position changed in January 2026. Even if it was appropriate for them to "hide behind the shield of litigation privilege", it was regrettable that when the GLO application was advanced before the Court on 29 and 30 April 2026, no mention was made of the fact that very large numbers of Claimants on the October Claim Forms would not be able to join the GLO: in fact the GLO application was made on behalf of all the Claimants. The Defendants had worked on the assumption that all those Claimants on the October Claim Forms would join the GLO.

17. I interpose to observe that in making the GLO the Court had worked on the same assumption as the Defendants. The Court had no reason to think that within a matter of months of the GLO being made, over half of the cohort of Claimants on the October Claim Forms would be seeking to discontinue.

18. I agree with Mr Antelme KC that these events reflect more than the usual modest adjustments to the Claimant cohort which can arise during the course of group litigation. However, I do not accept his submission that they amount to an abuse of the court's process for the purposes of the power to strike out under CPR 3.4(2)(b). There is no evidence that the Claimants' solicitors have deliberately used the court's process "for a purpose or in a way significantly different from its ordinary or proper use", such as to constitute an abuse: *Attorney General v Barker* [2000] 1 FLR 759 at [19], per Lord Bingham: they did not, for example, commence claims they had no intention of pursuing; nor have they delayed excessively in addressing those Claimants who have been advised to discontinue. The position is even starker for the Claimants themselves who are, on the evidence currently available, by and large simply following legal advice.

19. I am not therefore willing to make the Defendants' proposed order, to the effect that the claims who do not meet the SMRs would be progressively struck out over the coming months, on the grounds that there has been an abuse of process. Had I done so, there is a risk that the Claimants would have lost their Qualified One-Way Costs Shifting ("QOCS") protection under CPR 44.15(b). Mr Rawlinson KC went as far as to suggest that securing this outcome was one of the Defendants' ulterior motives for making the Strike Out Application (the other being to manage their future financial exposure). Given my conclusion as to the lack of an abuse I do not need to address this submission further. I simply observe that any Defendant is entitled to know the scale of the case against them, and in this case, the scale of the case has changed quite markedly in a short period of time.

20. Those Claimants who cannot, or do not wish to, join the GLO cannot benefit from the granting of the Claimants' Dispensation Applications described in *Fuschillo No. 1* at [18]-[19]. This means that they are in breach of the requirements of CPR 16 to serve (i) individual Schedules of Loss; (ii) individual supporting medical reports; and (iii) initial disclosure with the Particulars of Claim. Where applicable, they are also in breach of the requirements to provide (iv) details of dependents; and (v) details of any provisional damages claim.

21. For this reason, the power to strike the claims out for a "failure to comply with a rule, practice direction or court order" under CPR 3.4(2)(c) would technically be available. However, as Mr Rawlinson KC rightly submitted, framing the Claimants' position in this way ignores the practical reality, which is that until it was known that certain claims did not meet the SMR, all parties proceeded on the basis that they would become subject to the GLO and thus have the benefit of the Dispensation Applications.

22. Even if I had been satisfied that the power under either CPR 3.4(2)(b) or (c) was triggered, I would not have exercised the discretion to move to a process of striking out the claims now. As the Claimants highlighted, strike out is a draconian remedy of last resort. It is not appropriate to exercise it at this stage when there is an acceptable and proportionate alternative course available to the Court. This is the course proposed by the Claimants to the effect that there is to be a closely managed process of the Claimants providing monthly updates and serving notices of discontinuance in the coming months; and any claims which do not meet the SMRs but which have not been discontinued by the time of the next CMC in November 2026 will be revisited at that point, with the Strike Out Application adjourned to that date.

23. It is relevant that CPR 38.2 provides that a Claimant has a "right" to discontinue, subject to limited exceptions: *Excalibur & Keswick Groundworks Ltd v McDonald* [2023] EWCA Civ 18 at [38]. The Claimants in this litigation who seek to discontinue will require the Court's permission to do so under CPR 38.2(c)(ii), because of the presence of other Claimants on the claim form. The Defendants might consent to such discontinuances once the relevant notices have been served. Accordingly, this might be a process that continues without difficulty.

24. Mr Rawlinson KC recognised, realistically in my view, that where a claim does not meet the SMRs but where the Claimant has not given instructions to discontinue by November 2026, such a claim would be vulnerable to being struck out at that point. Either way, the Claimants' proposal will achieve the same goal as the Defendants had in mind, namely prompt resolution of this issue in the coming months, so that the cohort of Claimants is as settled as it can be before the important work of providing Supplemental SOCIs as a basis for assumed facts (as described below at [60]-[61]) is required.

25. I therefore approve the Claimants' proposed order to this effect: (i) by 28 August 2026, the Claimants' solicitors shall file and serve a Schedule which identifies any Claimants who do not wish to pursue their claims within the GLO, together with an application to discontinue; (ii) on the final working day of each calendar month, on a rolling monthly basis between 28 August 2026 and the date of the November CMC, the Claimants' solicitors shall confirm which other Claimants wish to discontinue, if any; and (iii) by 30 October 2026, they shall file a further application to discontinue in relation to the Claimants on the monthly lists; and (iv) the Strike Out Application is adjourned to the November 2026 CMC.

Potential related claims

26. As to the possibility of a potentially large number of future claims of a very similar type to those covered by this GLO, I share the Defendants' concerns as to the potential impact of such claims on this GLO. The Claimants appeared to envisage bringing further proceedings that could be managed by a different judge who, alone, would decide how those cases should be managed. I agree with Mr Antelme KC that there is a risk of duplication of time and costs and of inconsistent judgments in that approach: the potential overlap between the issues of breach of duty, knowledge and causation are obvious, even if the injuries relied on in the future claims are different. He drew an analogy with other group litigation cases, where more than one GLO has been made, but where the GLOs were managed together so that the Court had visibility on the full range of related claims.

27. In my judgment the Defendants were right not to press for a stay in these proceedings while the position is clarified, but equally it is not sufficient to adopt the "wait and see" approach being advanced by the Claimants. This is not a case where entirely unrelated Claimants might come forward in the future, and where the Court would have to case manage those appropriately, in light of the stage of, and potentially the outcome of, these proceedings: rather, the Court is faced with a situation where Claimants who were expected to join this GLO have now given a clear indication that they may well bring future claims, and fairly soon.

28. It is therefore right to ask the Claimants' solicitor to provide a witness statement, as proposed by the Defendants, setting out what can properly be said about the future intentions of those of his clients who propose to bring claims for personal injury or death in respect of their use of Baby Powder which fall outside the GLO. It would help the Court to have some sense of (i) the number of such claimants in total (as at the date of the statement); (ii) the conditions in respect of which such claimants intend to pursue claims and the approximate number of claimants for each such condition; (iii) the timescale within which those claims are expected to be issued; and (iv) to the extent that he can give any indications, how the Claimants and KP Law intend to invite the Court to case manage those claims, including whether they intend to apply for a further GLO. These are the topics to be addressed in the statement. This will also be reviewed at the November 2026 CMC.

The Staged Approach Application

29. As reiterated in *Fuschillo No. 1* at [180]-[181], 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 and PD 19B, paragraph 15.1(1) provides that the managing Court in group litigation may give directions for the trial of "common issues". 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".

30. In respect of this Application, the Claimants relied on the ninth and thirteenth statements from Mr Longstaff, dated, respectively 27 February 2026 and 3 July 2026 ("Longstaff 9" and "Longstaff 13"); and the Defendants relied on the first and third statements from Ms Smyth, dated respectively 20 March 2026 and 10 July 2026 ("Smyth 1" and "Smyth 3").

31. The parties now agree that this litigation should 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. In my judgment this agreement is appropriate. A staged approach of this kind remains the most effective, and proportionate, way of progressing the issues of fact and law in this litigation, mindful of the high mortality rate of those Claimants who have been diagnosed with mesothelioma and the concomitant need for particular expediency: see *Fuschillo No. 1* at [4].

32. I say this bearing in mind the contents of the Generic Defence, which makes clear where the key disputes between the parties lie. For example, it is admitted that all three Defendants owed a duty of care and that knowledge held by one Defendant was knowledge held by all. However, the Defendants deny that Baby Powder was contaminated, deny the Claimants' allegations of actual and constructive knowledge and deny key aspects of the Claimants' case on causation.

33. The parties agreed that issues reflecting the broad topics of "Contamination" and "Generic Causation" should be included at Stage 1, but the Claimants alone sought the

inclusion of a third issue reflecting the broad topic of "Knowledge": see, respectively, Issues 2, 11 and 3 in *Fuschillo No. 1* at [182]. In addition to the dispute on the inclusion of the Knowledge issue, the parties disagreed about the wording and thus the scope of the Contamination issue.

34. I am satisfied that selecting Contamination and Generic Causation as Stage 1 issues should make a very significant amount of progress for the parties towards resolution of the key disputes in this litigation. They allow for a clear line to be drawn between "objective" and "subjective" issues; and should ensure that the Stage 1 trial is directed towards a relatively confined factual enquiry. They also may well be dispositive of the claims. I take a different view in relation to the Knowledge issue for the reasons given at [45]-[51] below.

(i): Contamination

35. In several respects the parties' competing proposals for the wording of the Contamination issue addressed the same sub-issues in substance, but just described differently. In some respects the Claimants' wording included issues which the Defendants accepted would inevitably need to be addressed, albeit that they had not considered it necessary to include them in their own wording.

36. The Defendants dispute the meaning given to the terms "fibrous talc" and "abestos" as formulated in the AGPOC. It would therefore assist if the Contamination issue reflected this.

37. I accept the Claimants' submission that the questions of whether (i) Baby Powder was contaminated by heavy metals as well as asbestos; and (ii) whether mining, milling or other intermediate processes themselves contaminated Baby Powder, in the way set out in the AGPOC, should be included in the Contamination issue. In my judgment these are both integral aspects of the Claimants' case on Contamination, and so should be determined at the same time as the remainder of the Contamination issue. I say this conscious that (i) the role of heavy metals other than iron is limited to the deceit claim: see *Fuschillo No. 1* at [60], [63], [104] and [147]; and (ii) the issues relating to mining, milling or other intermediate processes might also be relevant to any later consideration of the issue of breach of duty.

38. I am not persuaded that Longstaff 13 at paragraph 5.2.6.3 introduces new allegations on mining, milling or other intermediate processes: see the AGPOC, [34]-[39]. The Claimants are also about to file a Generic Reply. If further particulars are needed, a Part 18 request can be made, as the Defendants accept.

39. There is a fundamental issue between the parties as to the issue of testing. The Defendants rely heavily on the fact that over many decades, their testing, to recognised standards, did not reveal asbestos, such that they contend that the Baby Powder was "not contaminated". The Claimants dispute this and contend that the testing methodologies used (in particular the reliance on certain protocols and detection limits which they argue were ill-suited to the fibres in question) were incapable of reliably detecting the contaminants at the concentrations at which they were present, and that negative historic results are therefore not probative of an absence of contaminants.

40. In my judgment the issue of testing and the accuracy and meaning of those tests is central to the Contamination issue. Mr Antelme KC was therefore right to make explicit during the hearing that the Defendants accepted that the Contamination issue would need to embrace these topics. It is anticipated that the Defendants' documents and/or witness evidence will set out factually what testing they carried out, and the testing experts (i.e. the material scientists/microscopists) will comment on the adequacy and reliability of the same. The issue of the standards applied to those tests is, in my judgment, similarly integral to the Contamination issue.

41. The Defendants' proposals to include questions relating to amounts and dose in this issue are also sensible.

42. Finally, although they use the convenient shorthand of "Contamination" for the purpose of submissions, the parties rightly accepted that it is appropriate to describe the issue in a more neutral way, given that the Defendants dispute that there was contamination in the manner alleged.

43. Accordingly, the following should act as a high-level description of the Contamination issue to be resolved at the preliminary issues trial (rather than a granular analysis of every question which will need to be addressed):

Issue 1: The Constitution of Baby Powder

(a) What is the mineral talc, does it have distinct "forms" or "habits", and how does the mineral talc come to be geologically 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) Specifically, are any of the following constituents of talc: (i) fibrous talc; (ii) asbestiform talc; and (iii) talc with Fe in the crystalline structure ("the constituents")?

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

(e) Did Baby Powder (as a finished product) supplied for sale within the UK over the period 1965-2023 contain any of the alleged talc constituents? Was it contaminated by asbestos and/or heavy metals ("the contaminants")?

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

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

(h) What testing was conducted on Baby Powder/the materials which constituted the Baby Powder at the times relevant to the Claims? What standards applied to that testing? What was the accuracy and meaning of those tests?

(i) If the answer to issue (e) is in the affirmative, when, how often, and in what amounts (actual amounts, or alternatively, minimum and/or maximum amounts) were each of the constituents and contaminants present?

(j) In light of these findings, in any given bottle of Baby Powder supplied for sale in the UK, (i) what was the amount of each constituent of talc?; and (ii) what was the amount of each alleged contaminant?

(k) What is the aggregate amount (i.e. dose) of each of the alleged constituents and contaminants listed above to which each individual member of the cohort would have been exposed across repeated and regular use over a period of at least five years?.

(ii): Generic causation

44. The parties have agreed that the Defendants' proposed wording of this preliminary issue can be adopted, and I accept that. It is as follows:

Issue 2: Generic Causation

(a) As a matter of medicine and science, were any of the constituents or contaminants contained within Baby Powder capable of causing Ovarian Cancer and/or Mesothelioma (in each case, as defined at paragraph 40 f. of the GLO) as alleged by the Claimants?

(b) If so, at what minimum aggregate exposure level, and which of the constituents and contaminants identified in Issue 1 above?

(iii): Knowledge

45. The Claimants proposed adding a third preliminary issue to the Stage 1 trial, namely "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 (a) asbestos; and/or (b) "asbestiform talc" or "fibrous talc" (if such distinct "form" or "habit" is proven); and/or (c) other contaminants including heavy metals". Their initial suggestion that the Knowledge issue would also encompass what the Defendants knew, or should have known, about any foreseeable risk of harm to users of Baby Powder was not pursued at the hearing.

46. Mr Rawlinson KC contended that including this issue at Stage 1 was both desirable and necessary, because the Knowledge issue overlaps substantially with the Contamination issue, and because it would enable the parties to make substantial progress on the

liability issues in the Claimants' claims in both negligence and deceit. I do not accept this submission, for the following reasons.

47. *First*, while proving knowledge is an essential ingredient of liability for each Claimant, in my judgment there is insufficient utility in determining it as a preliminary issue. Mr Rawlinson KC was right to highlight that if the Contamination and Generic Causation issues are both answered in the Claimants' favour there would need to be a further trial in any event, not least of the issues of breach of duty in negligence and the various elements relating to the deceit claim. However, the relevance of the Contamination and Generic Causation issues is that if either or both are answered in the Defendants' favour, then that is likely to be dispositive of the claims. Adding the Knowledge issue does not assist in this regard.

48. *Second*, as Smyth 3 made clear at [53.1], resolution of this issue would require a very substantial factual enquiry far wider than that required in relation to the Contamination or Generic Causation issues. Longstaff 13 itself at [7.28]-[7.40] pointed to some thirteen categories of documents which were said to be relevant to the Knowledge issue. Inevitably some of these documents, for example testing records and evidence about the accuracy of them, would fall to be considered in relation to the Contamination issue (see [39]- [40] above) but the Knowledge issue is, on any view, wider, not least as it would require determination of not only what was known by the Defendants but also what should have been known by them.

49. *Third*, this necessary scope of investigation means that adding Knowledge as a preliminary issue would delay the trial for several months: indeed on the Defendants' estimates by up to a year. This is contrary to the need for expediency given the mesothelioma diagnosis of many of the Claimants: see [31] above. While a trial of the Contamination and Generic Causation issues should be capable of being completed in 8 weeks, adding in Knowledge would add around another 4 weeks to the time estimate, thus increasing the costs to the parties and the resources required of the Court for limited benefit.

50. *Fourth*, while there is an overlap between the contamination and knowledge issues, there is also a likely significant overlap between knowledge and other key issues in the proceedings such as breach of duty and deceit, but a line needs to be drawn somewhere.

51. *Finally*, determining the Contamination and Generic Causation issues first, alone, will help narrow the issues on Knowledge. This is because it will only be necessary for the Court to determine what knowledge the Defendants had of any contamination which the Court has found to exist; and what knowledge they had of any risk of harm in light of the findings on what diseases (if any) Baby Powder is capable of causing.

Directions

52. The parties were able to agree the vast majority of the directions necessary for a preliminary issues trial in early 2028. They acknowledged that the timetable was ambitious, but that this was merited by the mortality rate of the cohort of Claimants with a mesothelioma diagnosis: see [31] above. In my judgment the timetable set is ambitious, but realistic, and strikes the right balance between expedition and ensuring

that the parties, the experts and the Court have a realistic period in which to prepare properly for a trial of this scale.

53. By agreement, the Claimants will serve their Generic Reply to the Generic Defence by 11 September 2026.

54. Disclosure will take place through a bespoke process including, in summary, (i) the Defendants disclosing to the Claimants the documents which have regularly been disclosed by the First Defendant to Plaintiffs bringing personal injury claims in the USA alleged to arise out of their use of Johnson & Johnson talcum powder products (the "US Production") in an electronic format; (ii) the parties liaising including by holding a disclosure meeting to discuss what further disclosure is required, directed to the preliminary issues, with inspection to be given by 12 March 2027; and (iii) the parties seeking further directions from the Court at a CMC in November 2026 if required. If an alternative course is ultimately required, the timetable permits that to be addressed before the Stage 1 trial.

55. The parties' current joint position is that assumed facts are highly likely to be necessary for the preliminary issues trial, rather than the use of Lead Claimants or Lead Cases. There remains some disagreement as to whether the assumed facts will relate solely to the industrial hygienists' dose modelling or more widely, but it is not necessary to resolve this issue now. I agreed to the Defendants' proposal that parties be given liberty to seek further directions from the Court on whether assumed facts are, in fact needed, and if so, what they should be, at a CMC in March 2027 if required.

56. The parties agreed that witnesses of fact on the preliminary issues will serve their witness statements by 30 April 2027. They agreed that expert evidence from those with the following areas of expertise was appropriate: (i) geology/minerology/mining and processing; (ii) microscopy/materials science and analytical testing; (iii) hygiene/engineering or occupational hygiene; (iv) statistics and epidemiology; (v) toxicology; (vi) oncology (ovarian cancer); and (vii) oncology (mesothelioma). I agree and grant both parties permission to rely upon written expert evidence in each of these disciplines. Provision has been made for a process by which the parties will agree a List of Topics to be covered by each discipline, with the Court resolving any disputes at the November 2026 CMC.

57. The parties have agreed that expert reports be served in two "waves", with the reports in geology, materials science, hygiene, epidemiology, statistics and toxicology served first, and both oncology reports served later. This has the benefit of permitting the oncologists to have regard to and build on the other experts' reports and means that the experts and parties are not all working to a single simultaneous deadline. Reply reports have been dispensed with and provision made for joint reports. These are all very sensible proposals and I adopt them.

58. The parties were unable to agree the detail of directions applicable to (i) the reliance by the experts on examinations, tests or experiments which they have already undertaken in the course of this litigation for the purposes of their reports; and (ii) whether any further testing should be undertaken in the presence of the opposing party's expert of like discipline. Although the Technology and Construction Court Guide 2026 at paragraph 14.3.2 supports the latter course, in my judgment it merits further

consideration in this case. If this remains an issue it can be revisited at the November 2026 CMC, when the Lists of Topics will be considered more generally: see [56] above.

59. The parties agreed that the preliminary issues trial (without the Knowledge issue) could take place in early to mid-2028, with the Court sitting on four days of the week, with a time estimate of 6-8 weeks; and that regular CMCs should be factored into the timetable. The relevant dates have now been listed, at least provisionally, and are set out at [80] below. I would be amenable to adding in regular short update meetings, for example at 9 am on a Friday for one hour, as has occurred in other GLO litigation, if the parties considered that would be helpful. This can be factored into the draft order from this hearing if appropriate.

The Supplemental SOCIs

60. As noted at [55] above, the parties agree that assumed facts are highly likely to be necessary for the preliminary issues trial, to provide the foundation on which the expert witnesses may consider the issues.

61. Those assumed facts should be designed so that, insofar as possible, they can provide as much guidance to the wider cohort of Claimants as possible. Accordingly, it is desirable that those assumed facts are guided by the facts relevant to the individual Claimants. The only source of that information is the SOCIs.

62. Pursuant to paragraph 41 of the GLO, the Claimants provided the first batch of Initial SOCIs and medical records for 350 Claimants on 26 June 2026.

63. The information provided in the Claimants' Initial SOCIs is generally at a high level and provides no or limited detail about the nature and circumstances of each Claimant's use and exposure to Baby Powder. The parties agreed that more information relating to the Claimants' use of and exposure to Baby Powder is required and that these will be obtained via Supplemental SOCIs.

64. The parties have now agreed that the Claimants should serve the Supplemental SOCIs by 4 pm on 29 January 2027.

65. The Supplemental SOCIs will be provided by around 300 Claimants, comprising (i) the "Mesothelioma" Claimants on the Group Register (of which there are 69 "pleural" and 20 "peritoneal" Mesothelioma Claimants); and (ii) 200 "Ovarian Claimants" chosen at random from the Group Register ("the Pooled Claimants"). The Ovarian Claimants who will provide Supplemental SOCIs will be selected by arranging their names alphabetically and selecting every twentieth Claimant on the list until 200 have been selected, returning to the first unselected Claimant once the end of the list is reached.

66. The parties have also helpfully agreed a template for the format of the Supplemental SOCIs, which will form Schedule 1 to the order from the hearing.

Costs and costs budgeting

67. Two discrete costs issues arose in the period leading up to the hearing.

68. *First*, the Claimants initially sought their costs of the Amendment Application on the basis that they had been forced to make the application and were, on balance, the

successful party on that application. The Defendants contended that it was simply not right that the Claimants had been forced to make the application: although it had been precipitated by observations on the GPOC made by the Defendants, the burden remained on the Claimants to plead their case properly. The parties have now agreed a pragmatic course in the interests of saving court time, that the costs of the amendment application (both of the successful application itself and the costs incidental to the amendments themselves), shall be costs in the case.

69. *Second*, while the parties agree that an Electronic Platform ("EP") using Opus 2 is appropriate for the purposes of disclosure and bundle creation, they disagreed as to the costs of this process. The Defendants proposed that the costs of hosting the EP throughout the litigation be borne by the Claimants. The Claimants opposed this on the basis that the platform will be used by both parties, such that the costs of the EP should be shared between the parties throughout the litigation.

70. In my judgment the Claimants' submissions on this issue are to be preferred. The EP will be used by both parties and the costs of it should therefore be shared. Accordingly, the order from this hearing should reflect any hosting costs imposed by Opus 2 being borne jointly by the Claimants and the Defendants, but then becoming costs in the case. Any individual or "per user" access charges imposed by Opus 2 will be borne by the party seeking such access and become costs in the case.

71. As to costs budgeting, the Defendants invited the Court to undertake costs budgeting, to enable the Court to retain control over the parties' costs in this substantial piece of litigation and ensure that they remain proportionate and reasonable. Experience of other recent group litigation indicates that costs (particularly the claimants' costs) can become disproportionate: see, for example, *Pan NOx Emissions Litigations* [2024] EWHC 1728 (KB) at [36] where Constable J and Senior Costs Judge Gordon-Saker described the costs incurred and estimated as "staggering", "frankly absurd" and "wholly unreasonable".

72. The Claimants submitted that the suggestion for costs budgeting was premature, and that budgeting may ultimately prove to be a disproportionate exercise, arguing that budgeting in and of itself is expensive and effectively "front-loads" costs, is likely only to lead to contested disputes about variations, for which the use of court time is not proportionate.

73. Mr Rawlinson KC referred to (i) CPR 3.12(b), which provides that the costs management provisions do not apply "where the claim is commenced on or after 22nd April 2014 and is for a monetary claim which is not quantified, or not fully quantified…and in any such case the claim form contains a statement that the claim is valued at £10 million or more"; and (ii) the pilot in the Business and Property Courts to suspend costs budgeting if the value of the claim is over £1 million, unless the Court is satisfied that the litigation can only be conducted justly and at proportionate cost if a costs management order is made. Instead, they proposed that the parties provide costs updates every 6 months.

74. In my judgment this litigation merits the use of costs budgeting, for the following reasons.

75. *First*, costs budgeting is proportionate given both the sums at stake and the level of costs which are likely to be incurred by the parties. A process by which the parties merely provide the Court with costs updates provides transparency over the costs incurred but does not enable the Court to have any control over them: as Mr Antelme KC lucidly put it, the Court will only have sight of any unreasonable and disproportionate costs "after the horse has bolted" (meaning that those costs have already been incurred).

76. *Second*, as Mr Antelme KC highlighted, CPR PD 3D, paragraph 2(f) provides that an order for the provision of costs budgets, with a view to a costs management order being made, "may be particularly appropriate in personal injury and clinical negligence cases where the value of the claim is £10 million or more". This is such a case.

77. *Third*, the parties have been able to largely agree directions through to trial, such that there is no reason to believe that there is any greater risk of there being extensive disputed variations than in any other piece of substantial litigation. That is not, in any event, in itself, a persuasive reason for dispensing with budgeting.

78. I have consulted with Senior Master Cook on the costs budgeting issue and he shares my view. It is intended that Senior Master Cook will assist with the costs budgeting exercise at the November CMC. If the Defendants wish to make submissions to the effect that a costs judge should do so, as they have intimated, these should be made within the next 28 days.

Conclusion

79. Accordingly, for all these reasons, (i) the Strike Out Application is adjourned to the November 2026 CMC on the terms set out at [22] and [25] above; (ii) the Staged Approach Application is granted in respect of the Contamination and Generic Causation issues only, but not that of Knowledge; (iii) the directions to the Stage 1 trial will reflect the matters set out at [52]-[59] above; (iv) Supplemental SOCIs will be provided by 29 January 2027; (v) the costs issues relating to the Claimants' Amendment Application and the hosting of the EP will be addressed in the manner set out at [67]-[70] above; and (vi) costs budgeting will take place.

80. Directions have been given towards the following hearings: (i) Case Management Conferences on **25 and 26 November 2026, 24 March 2027, 26 May 2027** and **6 October 2027**; (ii) a Pre-Trial Review on **8 December 2027**; (iii) a preliminary issues trial from **14 February to 7 April 2028**; and (iv) oral closing submissions from **22-25 May 2028**.

81. I reiterate my thanks to all counsel for their constructive approach.